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Sexual Harassment, Liberalism, and the Law

By Jeffrey Rosen

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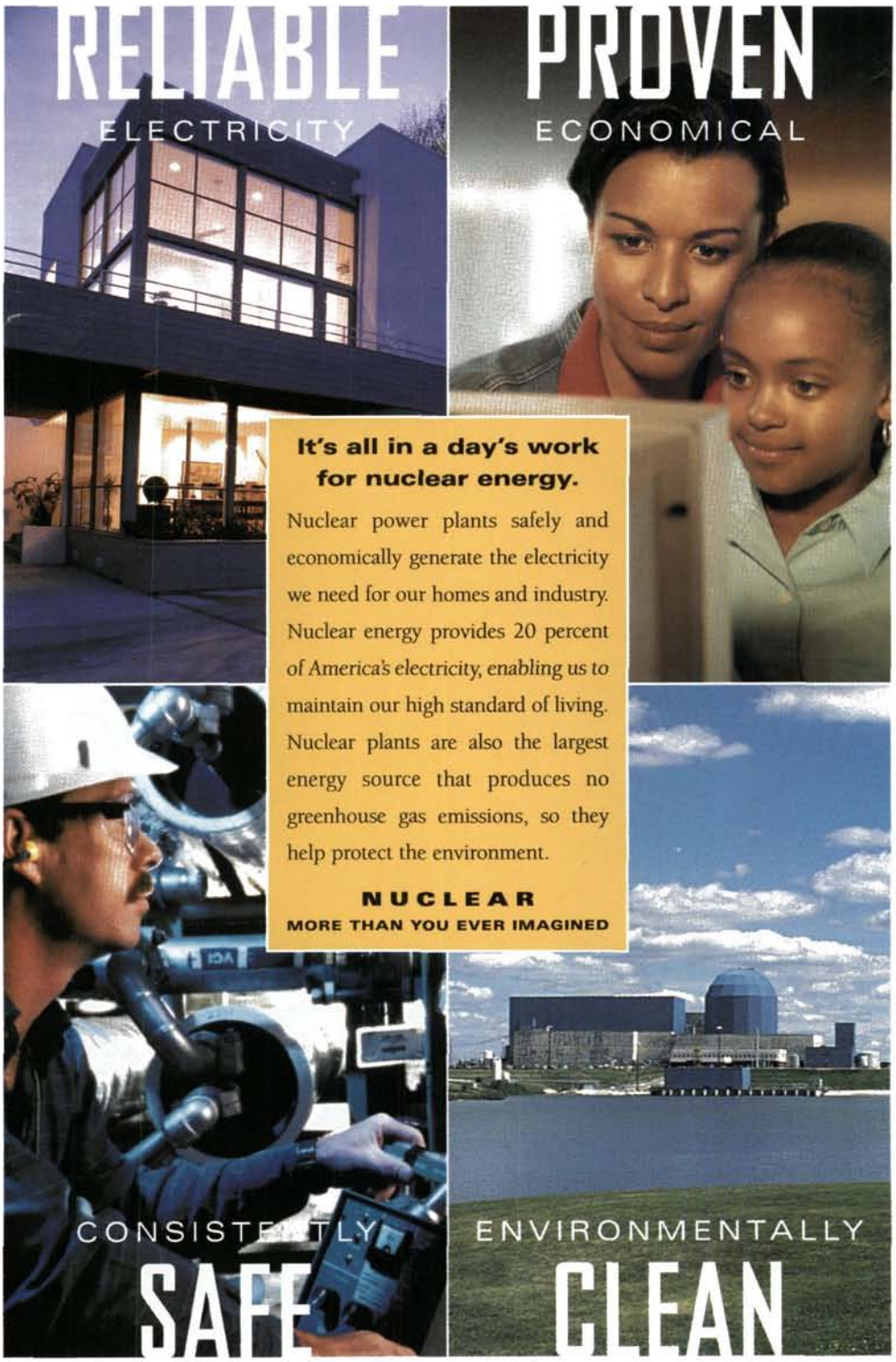

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CORRESPONDENCE

Sanctioning sanctions

To the editors:

Jacob Heilbrunn's denunciation of corporate anti-sanctions lobbying ("The Sanctions Sellout," May 25) overlooks key dimensions of the issue. First, though foreign corporations must be circumspect in dealing with "political" questions that fall within the local government's purview, multinational corporations have, on the whole, enhanced freedom as well as welfare in the host countries through their higher wages, training programs, recognition of local labor unions, and adherence to modern standards of labor relations. Second, extensive studies of economic sanctions in international affairs make clear that even well-enforced multilateral sanctions work only rarely and in very particular circumstances.

The last thing America needs is a populist foreign policy, be it Wilsonian or Buchananite, with interest groups inducing Congress to impose sanctions whenever and wherever evil foreigners violate the political values of (some) Americans. Down that road lies U.S. isolation and weakness in international affairs and, quite possibly, a reactive resurgence of economic nationalism on a world scale.

DAVID G. BECKER
Hanover, New Hampshire

To the editors:

By omitting Serbia from his article, Jacob Heilbrunn avoids one instance where sanctions have helped keep the supposed target in power. By imposing sanctions, we have given President Slobodan Milosevic the very camouflage he requires to hide the essential economic problems of the former Yugoslavia. At the height of the sanctions and embargo, you could eat fresh shrimp and drink Chivas Regal or buy a new Sony VCR or Diet Coke in Belgrade, if you had the money. You could use your credit cards and cash travelers checks, if you knew where to go. If you had money, the sanctions and embargo were no problem.

Sanctions work only against the poor, the elderly, and children, and precious few thugs crave moral approbation.

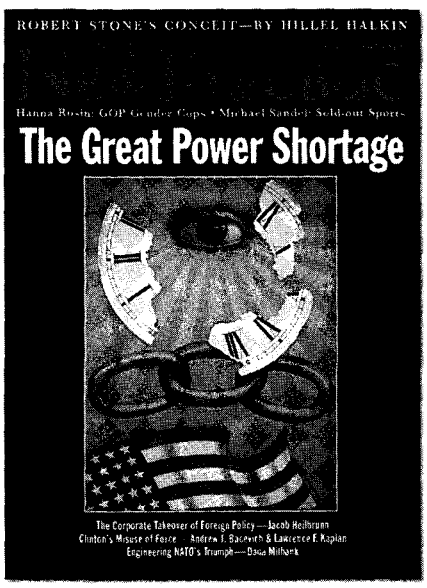
JOSEPH J. MIANO
Woodbridge, Virginia

To the editors:

Jacob Heilbrunn both understates and overstates the case for unilateral trade sanctions against "tyrant" regimes.

He accepts uncritically the economic cost of these sanctions, recently estimated by an influential Washington think tank as "between $15 billion and $20 billion" and "250,000 jobs lost in 1995 alone." But the cost to us has to be estimated as the loss in the gains from trade, not the entire reduction of trade volume, and this is likely to be no more than a fraction of the total reduction in our trade. As for the assertion about jobs lost, this too is wrong: trade policy (whether theirs or ours) will generally not affect overall employment (as against, say, that of Boeing); only macroeconomic policy does.

At the same time, if we buy into the view that sanctions must be judged by a consequentialist ethic and deny ourselves the moral view that we will not sup


ROBERT STONE'S CONCEIT—BY HILLEL HALKIN
The Great Power Shortage
The Corporate Takeover of Foreign Policy—Jacob Heilbrunn
Clinton's Misuse of Force—Andrew J. Bacevich & Lawrence F. Kaplan
Engineering NATO's Triumph—Dana Milbank

with the devil, even if all we accomplish is the loss of a free meal for ourselves, Heilbrunn winds up being overly sanguine about unilateral trade sanctions by failing to consider that such sanctions must be judged against other policies to see if they give us the largest benefits for a dollar's worth of cost to us.

If we were to eschew trade sanctions, but instead proactively and publicly denounce rogue regimes for their egregious violations of civil and political rights, go after them at the international human rights agencies, deny them the gifts of aid and special trade privileges (such as trade preferences to developing countries), and assist their own NGOs at home (if possible) or in exile, we should surely carry most of our citizens and CEOs with us and exert moral pressure which, as Heilbrunn correctly states, even tyrants are not entirely immune from.

Where the Clinton administration fails us is in going easy on unilateral trade sanctions while assuming that détente and engagement alone should suffice to change these regimes. In the long run, it should work. But we can do better yet by activism of the kind I propose. If a woman is screaming for help because she is being beaten up by her boyfriend, you are not going to be credible if you tell her to hang in there; economic development will eventually lead to changes in the law to protect you. You have to do something right away to help!

JAGDISH BHAGWATI
New York, New York

Doctrinal differences

To the editors:

I was surprised that Andrew J. Bacevich and Lawrence F. Kaplan sought to blame the Clinton administration for what is indeed America's flawed military doctrine ("Battle Wary," May 25). The roots are in the (Caspar) Weinberger doctrine of 1984 and the further restrictions General Colin Powell was able to add to it following the victory in the Gulf war—crafted to prevent U.S. troops from being drawn into another Vietnam quagmire by ostensibly uncaring politicians. With the prestige won by the U.S. military in the Gulf, the language of the doctrine has come to describe any debate about the use of force and to proscribe military intervention in general.

President Bush had begun to wean U.S. policy away from this doctrinal straitjacket, and former national security adviser Tony Lake sought to continue that effort for Clinton when we suffered the setback of that tragic, botched military operation in Somalia. Somalia led to the reluctance to intervene in Rwanda to prevent genocide, something we have come to regret. The influence of the Weinberger/Powell doctrine persists. The long and tortuous debate about the intervention in Bosnia, which Powell opposed vociferously, used the vocabulary of the doctrine to come to a ridiculous "exit strategy" that was to get us out unscathed in six months. The current difficulty in addressing the Iraq problem reflects the same doctrinal concerns and language that Bacevich and Kaplan are complaining about.

ALFRED R. BARR
Washington, D.C.

To the editors:

Somalia did constitute a turning point in Clinton's military doctrine. But there are other early indications of Clinton's chocolate soldiering in the administration's handling of the North Korea nuclear-bomb episode. Clinton talked tough in July 1993, telling the North

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Koreans that, if they ever used nuclear weapons, "it would be the end of their country." He reinforced American Patriot anti-missile batteries in South Korea and beefed up American forces in the western Pacific. But a year later he signed a "package deal" in which Pyongyang agreed without adequate inspections to cease nuclear weapons production and to dismantle some of its reactors in return for massive amounts of U.S.-financed fuel oil and two modern nuclear reactors, paid for by Tokyo and Seoul. The import of such a message could hardly be lost in Baghdad.

THOMAS H. HENRIKSEN
Stanford, California

Posing pols

To the editors:

My indignation rose as I read Hanna Rosin's piece ("People of Gender," May 25). It is frustrating when political figures fake sympathy and put on a show of feelings that is nothing more than a pose.

MILTON EZRATI
Port Washington, New York

Timbuktu travelers

To the editors:

Henry Louis Gates Jr. describes his three-day river trip from Mopti to Timbuktu ("All the Way to Timbuktu," April 20) aboard the river steamer *Timbuktu* and writes: "Grim as it was, [the river voyage] was better than the only alternative: a 90-day camel caravan from North Africa due south across the Sahara."

When I visited Timbuktu, I didn't use the riverboat or the trans-Sahara camel caravan; instead I flew. If I hadn't wanted to fly, I would have had the choice of land transport by scheduled bus service, unscheduled (but frequent) "bush taxi," or by rented four-wheel-drive vehicle. Had I wished to travel on the Niger River, but not by river steamer, I could have taken a *pinasse* (water taxi) to Kabara (nine kilometers from Timbuktu).

PETE NORTON
Houston, Texas

Henry Louis Gates Jr. replies:

I neglected to point out that there are additional means of traveling to Timbuktu within the country of Mali, including air travel and travel by road. In my essay I was referring to the two traditional ways of reaching this ancient city, which I was attempting to replicate in a film series titled *The Wonders of the African World* that I am making for PBS and the BBC.

Truth tellers

To the editors:

Charles Lane ("To Tell the Truth," May 25) refers to "professional journalism's ingrained absolutism about the truth" as if it's an evident fact. But, if journalists considered the truth to be "an absolute value," they wouldn't rush stories into print for deadline or competitive reasons. If they genuinely had an "ingrained absolutism about the truth," they wouldn't lie to sources about the scope of their stories or use hidden cameras.

Some years ago a "60 Minutes" correspondent posed as a businessman to expose slave labor in China. Such exposure is a desirable social outcome. But it came about by deception, and it sends a clear signal to journalists (perhaps of lesser ability) that lying in the service of a story is acceptable. This sounds a lot like what Lane says applies to non-journalists: truth as a relative value, with other values taking precedence. The shame is that, unlike the laudable "60 Minutes" piece, most of the values that seem to take precedence these days have more to do with getting a story first than with getting it right.

HELIO FRED GARCIA
Chappaqua, New York

continued on page 41

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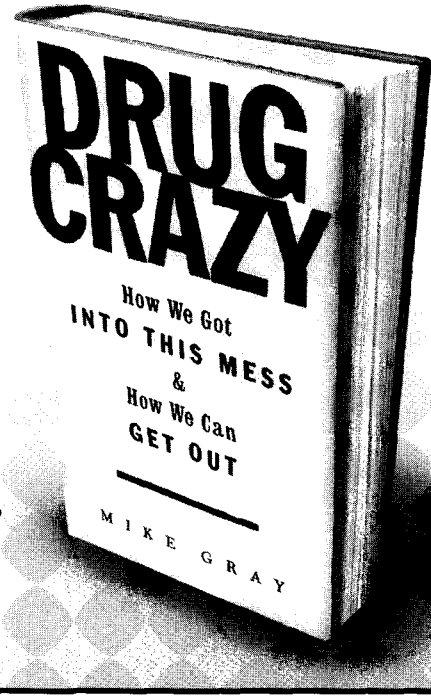

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FROM WASHINGTON

Grover cornered

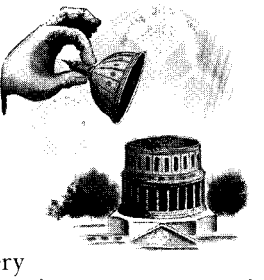
I used to think I was the only person frightened by conservative activist Grover Norquist. Now I know better. Millions of California voters are scared of him, too.

I know this because Norquist figured prominently (if unwittingly) in the June 2 defeat of Proposition 226, the so-called Paycheck Protection Act, which would have required California's labor unions to obtain permission from each one of their members before spending dues money on political activity. The measure—which Norquist's organization, Americans for Tax Reform, promoted and helped to finance—would have crippled the labor movement politically. No more massive grassroots efforts; no more expensive television advertising campaigns. So labor fought back with, naturally, a massive grassroots effort and an expensive television advertising campaign. And one of the most effective ads was a spot that featured Norquist's photo with a warning that 226 would open the door to a conservative agenda: entitlement cuts, a rollback of patient protections against HMOs, school vouchers, and so on.

Having blown a huge lead—early polls showed 226 winning by a two-to-one margin—Norquist and his allies are now crying foul. They claim labor used scare tactics; that labor won because it spent the very money 226's backers claim is illegitimately secured; and that labor never argued the merits of the measure. All of which is quite true. Labor ran a demagogic campaign designed to frighten voters. It outspent the proposition's backers by as much as seven to one. And it made only the slightest effort to challenge the basic, moral logic of 226's supporters—namely that, because union dues are mandatory for workers in organized workplaces, it's not fair to spend that money on politics without their permission.

For Norquist and his allies, complaining about this isn't just sour grapes. Similar laws are under consideration in more than half the states, and congressional Republicans are insisting a Paycheck Protection clone be part of any comprehensive campaign finance reform bill. By painting the anti-226 effort as illegitimate, the advocates of Paycheck Protection intend to head off similar counterattacks in the future—and claim the moral high ground in the midst of their demoralizing defeat. Says Norquist, "If union bosses could complete the sentence, 'We think we should be able to take our members' money and use it on politics because...' they would."

Actually, there is a perfectly reasonable way to fill in that blank, even if the unions didn't make a point of saying so in California. Voluntary organizations like the Christian Coalition don't need to obtain the prior written permission of their members in order to make decisions on how to spend dues money. Corporations don't poll stockholders every time their political action committees make a contribution. Yes, it's true that a union is not your run-of-the-mill voluntary organization, in the sense that union dues are compulsory to avoid the "free rider" problem. (Since all workers receive the benefits of collective bargaining, all are required to pay for the union's representation.) But it's also true that all workers already have the right, under federal law, to request a refund equal to the portion of their dues money that goes toward political purposes. Paycheck Protection's advocates claim that the right is illusory—that few unions notify their members of that right and that the Clinton administration, which has benefited from hefty union campaign contributions, has looked the other way at labor's noncompliance. But, to the extent that's true, it's an argument for better enforcement of the existing law—not for passing a new one.



Having said all that, however, I'm not sure it's fair to blame the unions for not making this argument more central to their campaign. For one thing, it's far too convoluted a point to make effectively in a 30-second television ad. More important, though, there's nothing illegitimate about using the likely consequences of a proposal (in this case, a more conservative political environment) to argue against its enactment. And there's nothing wrong with voters who use such arguments to make up their minds.

Indeed, California's voters may be on to something. It's a sad truism of American politics that money will always influence politics because it will find a way around any regulations imposed upon it. For example, soft money—the vast, unregulated donations to the parties you hear about on the news so often—evolved precisely because the 1974 campaign finance reforms limited direct donations to candidates. If government now tries to limit soft money, as many reformers propose, financiers will start plowing their money into independent political expenditures.

The real goal of campaign finance reform, then, ought to be something more practical: a level playing field, not merely between incumbents and challengers, but among particular interests as well. In this light, the most effective campaign finance reforms are those that provide money for those who don't have enough of it already—by offering free television time or, better yet, more comprehensive public financing. On the other hand, measures that simply limit particular types of donations, such as Paycheck Protection, can be counterproductive if their effect is to put already disadvantaged groups at an even greater disadvantage.

Oh, I know—Norquist would howl at the notion that organized labor is "disadvantaged." And it's true that labor's donations to public officials, most of them Democrats, give it considerable political clout. But, overall, corporate interests still vastly outgun the unions. The Center for Responsive Politics calculates that business outspent labor eleven to one in the last election cycle. That number may be exaggerated, but few knowledgeable observers would dispute that a steep imbalance exists.

By neutering labor, Paycheck Protection would silence the only group that consistently advocates greater economic equality. In so doing, it would skew politics to the right—at least on bread-and-butter issues like taxes—and thus create a more hospitable environment for Norquist's agenda. Norquist once admitted that his goal was to "crush labor unions as a political entity," and his group endorses such conservative hobbyhorses as medical savings accounts, Social Security privatization, and the flat tax. California's voters obviously find those possibilities scary. That's why labor's scare campaign worked—and that's probably why Grover Norquist is so angry.

JONATHAN COHN

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THE NEW REPUBLIC

JUNE 29, 1998

PENALIZED

Less than a year ago, the "marriage penalty" in the tax code was the preoccupation of an obscure cadre of social conservatives in the House of Representatives. Now the Republicans and their supporters have made elimination of the marriage penalty their highest priority. "It is unfair, it is anti-family, and it must be changed," says Randy Tate, executive director of the Christian Coalition. The Democrats, meanwhile, have no plans to stop them. "I can count votes," Senate Minority Leader Tom Daschle told the *Los Angeles Times*.

Maybe so, but that doesn't mean this is the best use of Congress's time and energy. Yes, some married couples who file jointly owe higher federal income tax than the two partners would have owed if they had remained single and filed separately. This arrangement strikes most people as utterly senseless, if not downright immoral. But the matter is not quite so simple. While it's true that about 42 percent of couples pay a marriage penalty, about 51 percent actually receive a "marriage bonus"—they pay less tax than they would have if they had remained single. (Ironically enough, the families most likely to benefit are precisely the kind of traditional, one-earner families many social conservatives endorse.) And not only do more people get the bonus than pay the penalty—the sum total of the bonuses actually exceeds the sum total of the penalties. Therefore, the tax code does not, as a whole, penalize marriage. It rewards it.

Why can't the tax code be completely neutral toward marriage? It boils down to a mathematical dilemma. It is impossible for a progressive tax code to treat couples with equal incomes equally while neither rewarding nor penalizing marriage for anybody. (For a detailed explanation, see "Penalty Box," by Jonathan Chait, October 20, 1997.) Suffice it to say that the tax code can only pursue so many objectives at one time, and the current system represents a rough compromise among competing goals. Indeed, the current system is a product of two previous attempts to fix the very same dilemma: The first came in 1948, when Congress started treating married couples as single entities rather than as two individuals; the second came in 1969, when Congress tweaked the system so it no longer penalized single people. While not perfect, these adjustments have produced a rough balance between penalizing people for getting married and penalizing them for staying single.

The defenders of matrimony in Congress propose to re-jigger this compromise. It's not enough, they believe, that the tax code doesn't penalize marriage overall. *No one* must pay higher taxes on account of being married. Suppose they're correct. It's easy enough to accomplish their goal, in theory: you just tinker with the system one more time so that now single couples face a penalty for their lack of conjugal ardor. In essence, you go back to a system like the one that existed before the last reform—a system that penalizes singles instead of married couples. (Remember: The net marriage bonus in the tax code is bigger than the net marriage penalty. So, if you want to tilt the tax code even further in the direction of marriage, it's going to cost money.)

But wait—if Congress did that, single people would see their tax burden actually rise! That's not what most of the Republicans want. So that means paying for the proposed tax cuts—which are probably worth at least $30 billion a year—in one of three ways. You can tap part of the budget surplus; you can cut spending on various government programs; or you can find a new source of money to pay for the lost tax revenue (say, for example, the tobacco tax, which is fast emerging as the likeliest contender).

Of course, while none of these options raises taxes on single people per se, all of them have the same effect as a tax hike on single people—since they all would divert money away from other uses, such as debt reduction or government spending, that would benefit all Americans, single or married. (Some of the schemes are actually progressive, but, if the idea is to have a progressive tax cut, you could simply expand the Earned Income Tax Credit, which wouldn't penalize single people.) So we're back where we started. In a progressive tax code that treats couples of equal means equally, somebody has to pay a penalty—and that makes the current system, while far from ideal, better than most of the alternatives. •

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ALFRED KAZIN

"Twenty or thirty years ago, when all the birds began to sing": With those words that tell at once of history and magic Alfred Kazin began *On Native Grounds* in 1942 and announced that a new knight of literature had arisen, a knight from Brooklyn, who would defend the kingdom against the vulgar, the dogmatic, and the professional, against the acids of Marxism and aestheticism, against indifference and certitude and despair.

Did anyone ever love American writing more than Alfred Kazin? (He compared Howells to Tolstoy!) Literature was his air, his food, his tool of combat, his ground of hope. For more than half a century, until his death last week, he brought books and essays out of this consecration; he rinsed himself in the waters of American words; he received and he transmitted. Kazin reveled in his fidelities. It is hard to think of another great critic who was so unafraid of sentiment, so unembarrassed by immediacy. Surely there is no moister book by a strenuous mind than *A Walker in the City*, his memoir of coming of age in Brownsville; but it shows that affection is not the enemy of intelligence. He was a teacher of newness with an addiction to origins. Tradition amazed him. He never got over the gorgeous fact that all this had made its way to him. Reading Kazin, you learn how to be an heir.

But Kazin squeezed his fidelities, too. "The greatest single fact about our modern American writing," he declared, "[is] our writers' absorption in every last detail of their American world together with their deep and subtle alienation from it." He was alive to evil, and to the harshness at the heart of every pursuit of worldly gain. He was keenly aware that he lived in an age of unprecedented cruelty; and if America had been spared, or had spared itself, in the wisdom of its democracy, the ravages of totalitarianism, it had ravages of its own, too. Kazin was an idealist, not an idealizer. And so he made himself also into a scourge, and developed a style of thinking and writing that mixed celebration with denunciation. He came patiently to his conclusions and then gave impatience the reins. But he never broke away. He was a critic who kept his connection to what he criticized. "Our alienation *on* native grounds": That was the intellectual's challenge, the liberal's creed.

His fidelities were not only American. Writing of a synagogue in Brownsville, Kazin proclaimed: "Whether I agreed with its beliefs or not, I belonged; whether I assented to its rights over me or not, I belonged; whatever I thought of them, no matter how far I might drift from that place, I belonged. This was understood in the very nature of things; I was a Jew." With an almost comic bluntness he called one of his memoirs *New York Jew*. He liked the lumpy, irreducible sound of it. He knew little about the Jewish tradition, but he knew that it was his and he liked that it was his. And on January 10, 1944, his sensation of belonging issued in an article in this magazine (in 1942–43, he was an assistant editor, then the literary editor, and then a contributing editor of THE NEW REPUBLIC) that will live long in the annals of that tenebrous time.

"'In Every Voice, in Every Ban'" was a cry of outrage at the suicide of Shmuel Ziegelboim, the representative of the Bund who killed himself in London to protest the world's indifference to the extermination of the Jews. Kazin's words still scorch. "I have wanted to believe, and now do believe, that Shmuel Ziegelboim died because he was finally unable to withstand the real despair of our time—which arises not out of the burning and the killing and the endless political betrayals but out of a humiliation which some of us can still feel before so terrible a break in human solidarity. I think he died, as so many greater men have already died morally, because he was unable to believe in a future built on so unrecognized and unreported a human isolation and barbarism as we know today.... Where so great a murder has been allowed, no one is safe." It was an unmistakable effusion of conscience.

It was typical of Kazin to give his elegy for Shmuel Ziegelboim a title from William Blake. But he was the grateful creature of such collisions. "Or the look of the morning when the world, / Made fierce again over night..." he wrote in a poem that appeared in these pages a few weeks before he died. As a critic, as a teacher, as a friend, Alfred Kazin was a man of the morning and a man of the night. We will miss his ardors and his asperities. •

TO OUR READERS

TNR has completed its investigation of the articles written by Stephen Glass, the former associate editor whom we dismissed for fabricating three recent stories and parts of a fourth. We thoroughly rechecked 37 remaining pieces; as a final step, we sought comment from Glass, who made further admissions.

We believe that each of the following articles by Glass contains at least some fabricated material: "All Wet" (February 16, 1998), "Clutch Situation" (February 16, 1998), "Gift of the Magnate" (January 26, 1998), "State of Nature" (January 19, 1998), "Ratted Out" (December 22, 1997), "Anatomy of a Policy Fraud" (November 17, 1997), "No Free Launch" (November 3, 1997), "Kicked Out" (October 20, 1997), "Cheap Suits" (October 6, 1997), "The Young and the Feckless" (September 8 & 15, 1997), "Déjà Coup" (August 11 & 18, 1997), "Low Blows" (August 4, 1997), "Peddling Poppy" (June 9, 1997), "After the Fall" (May 26, 1997), "A Fine Mess" (April 21, 1997), "The Jungle" (April 7, 1997), "Spring Breakdown" (March 31, 1997), "Writing on the Wall" (March 24, 1997), "Don't You D.A.R.E." (March 3, 1997), "Rock the Morons" (February 10, 1997), "Holy Trinity" (January 27, 1997), "Probable Claus" (January 6 & 13, 1997), "Hazardous to Your Mental Health" (December 30, 1996).

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How Long Will These Sleeping Dogs Lie?

By now, you've probably heard all their excuses.

The Big Dogs, AT&T and MCI, are still howling that they can't compete in local telephone markets. It's just too difficult. It requires too much effort.

Just because they don't want to compete, doesn't mean there isn't competition.

Recently, the Federal Communications Commission held hearings in which smaller, local competitors described their success in competing against the Bell companies.

These smaller companies don't have the tens of thousands of employees that the big long distance giants do. They don't have billions of investment dollars. But they are competing.

While the big dogs are sleeping, Regional Bells are working to make competition work.

How? Local phone companies have devoted more than $4 billion and assigned over 8,000 employees to make sure competition works. They've built customized network elements; offered on-site network training and customer service 24 hours a day, 7 days a week. All to connect MCI, AT&T and other competitors to local markets.

You know those big dogs. They lie around all day.

MCI and AT&T have given up on local residential service. Why? The markets are open. Smaller companies are competing. Competition is here.

MCI and AT&T are stalling competition. They only want competition on their own terms. On their own timetable. That's what their executives conceded during recent merger discussions.

Wake up big dogs. And stop all that lying around.

We'll connect all Americans if we're allowed to compete.

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Though no degree of fabrication is acceptable, we note that the amount of such material in these articles varies widely. Three of them ("All Wet," "Clutch Situation," "Ratted Out") could be considered entirely or nearly entirely made up. In a few other cases, the false material consists of brief anecdotes or quotations in an otherwise broadly factual story.

The usual pattern, which the following examples may illustrate, is a blend of fact and fiction. "Anatomy of a Policy Fraud" consists largely of valid reporting about the Clinton administration's approach to cutting crime. But it also cites made-up sources such as the "Cops & Justice Foundation"; a supposed Republican poll on crime; "Donny Tye, a former California police officer"; and a "senior Justice staffer."

To cite another instance, "Don't You D.A.R.E.": It is true that some of the anti-drug program's critics have felt pressured to soften or change their views. But Glass fabricated some of the persons who purportedly had negative experiences with D.A.R.E., including "Daniel, a young professor at an Illinois college" and "James, a television news producer." Also invented are an "NBC employee" and a "Justice Department official" to whom Glass attributed information.

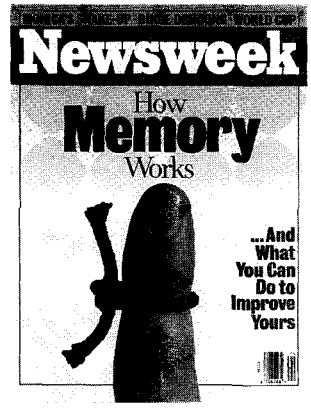
In "Peddling Poppy," Glass's account of a Hofstra University conference on the Bush presidency, "The First Church of George Herbert Walker Christ," "Mary Ung" of the "Committee for the Former President's Integrity," and "a small skydiving industry newsletter" called *Jump Now* are invented. Finally, in "Spring Breakdown," Glass's portrayal of a 1997 conservative political conference in a Washington hotel, Glass made up the article's accounts of drug use, drinking, and sexual harassment by young conference attendees.

We offer no excuses for any of this. Only our deepest apologies to all concerned. •

NOTEBOOK

SOLDIER BOYS AND GIRLS: Secretary of Defense William Cohen says gender-integrated basic training as well as modified mixed-sex living quarters will continue in the Army, Air Force, and Navy. This decision overrides the recommendations of a civilian advisory panel, which had proposed that all the services separate the sexes, as the Marine Corps already does, because of serious morale problems under the current system. Cohen insists that he made the call based on military efficiency, not fear of Democratic feminists on Capitol Hill. Be that as it may, we disagree not only with the decision Cohen made but also with the way he made it. Cohen said his judgment was shaped by the recommendations of the generals and admirals. While the officers should have been consulted, of course, to defer to them so openly in such a politically charged matter violates the spirit of civilian control over the military. The elected civilian president, acting through the secretary of defense, is supposed to be the commander-in-chief. The net result of Cohen's decision, though, is to blur that bright constitutional line—which has already been fudged by President Clinton's deference to the unelected officer corps on when and how to use force overseas. Now, Republicans in Congress are saying they may pass a law to end gender-integrated training. Cohen's equivocation should strengthen their hand.

TEAM EFFORT: We always knew that *Newsweek* had more talent in the tip of one finger than most magazines have in their whole staffs. Our belief was confirmed when we read the credit lines for this cover illustration: "Photograph by Hans Gissinger. Makeup by Shally Zucker for Judy Casey. Manicure by Roxanna Pintilie for Hardware Nail Polish–Warren Tricomi Salon. Styling by Angel Slay." •



WASHINGTON SCENE

PLATO'S PLAN

By Jason Zengerle

Here's a riddle to rival the old "if a tree falls in the forest" puzzler: If someone calls the major media outlets to his door, but then uses the occasion to utter just a few words and turn away practically all questions, did that person hold a press conference? In Washington, at least, the answer seems to be "No." Just ask Plato Cacheris. He's almost sure to take your call—although he'll probably politely refuse to answer your query.

It was Cacheris who summoned reporters to the sidewalk outside his Connecticut Avenue law office on June 2 so that he and his colleague, Jacob Stein, could unveil Monica Lewinsky as their new client. After four months of the William Ginsburg amateur hour, Lewinsky had apparently seen enough, and she had clearly hired some pros. Cacheris and Stein waited until just about five o'clock to appear with Lewinsky—perfect timing for live television reports and the rush-hour rubber-neckers passing by the heavily trafficked corner of downtown Washington.

But it was an odd event because, after going out of their way to attract such a large audience, Cacheris and

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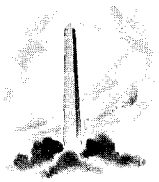
Stein made a big show of not speaking to it. Standing mute, the two men looked like the proverbial cats that ate the canary. And Lewinsky, wearing a knowing smirk of her own, seemed to bask in their reticence. The Washington press corps ate it up, using the scene to play subtle variations on their familiar anti-Ginsburg theme. "The taciturn antidote to Mr. Ginsburg," fawned Francis X. Clines in the next day's *New York Times*. "Drawing a sharp contrast with the loquacious Ginsburg," gushed Peter Baker in *The Washington Post*. "Quite a change from Ginsburg," chirped NBC's Lisa Myers. Of course, in the process of praising him as the publicity-averse anti-Ginsburg, the press gave Cacheris more attention than Ginsburg had had since those first heady days of Bimbroglio.



It's all in a day's work for Cacheris, whom Lewinsky has turned to in the hope that he might help her strike a deal with Ken Starr. And, given the four decades he's spent in Washington's clubby white-collar criminal defense community, Cacheris is probably a good choice. After all, he's a veteran when it comes to Washington scandals, having represented John Mitchell in Watergate, Ozzie Meyers in Abscam, Fawn Hall in Iranamok, and Aldrich Ames in the CIA-spy fiasco. But those who want to turn the Cacheris-for-Ginsburg switch into a lesson about lawyers staying out of the papers and off television are going to be disappointed. Cacheris is as much of a self-promoter as Ginsburg. He's just a better one.

Ginsburg crudely and repeatedly tooted his own horn. He appeared on talk shows; he penned open letters; he even told *The Washington Post*'s Bob Woodward: "I'm the most famous person in the world." Cacheris is savvy enough to leave that sort of work to others. Want personal details? Don't ask him. Talk to one of his friends or his wife, who'll be happy to tell you that he wears $1,500 suits made of Tasmanian merino wool and that he drives a white Porsche.

And, even if he were doing the talking, Cacheris would never be so clumsy as to go on the record and actually *say* he's a great lawyer. Consider *Washingtonian* magazine's account of Cacheris's jailhouse meeting with Aldrich Ames just after Cacheris became the spy's court-appointed attorney: "The door opened, and Ames ... stepped in.... Cacheris stretched out his hand to introduce himself. 'Plato Cacheris,' he said.... [Ames] looked surprised. 'I was wondering what I was going to do for a lawyer, and I get Plato Cacheris!'" The source of this flattering little anecdote? Well, *Washingtonian* interviewed only one person who was privy to this exchange, and it wasn't Ames.

Cacheris's symbiotic relationship with the media goes back to at least the late 1950s, when he was a lawyer at the Justice Department and reportedly fed a steady stream of information about one of his cases to *Life* magazine, receiving coverage in return. And today he's cultivated useful friendships with many of those who cover him. Take Robert L. Jackson, who helped pen the *Los Angeles Times*' front-page profile of Cacheris last week—a profile that described him as a "stickler for insisting on the truth," blamed John Mitchell's prison term on Mitchell's "staunchly refus[ing Cacheris's] suggestions that he plead guilty to reduced charges and testify for the government," and showcased Cacheris's humanity by highlighting the fact that he never pressed Mitchell for full payment of his legal fees. Jackson also devoted much of the story to describing the scene around Cacheris's backyard tennis court, which Cacheris routinely uses to host games between himself and other high-powered attorneys. How does Jackson know this? He plays on the court himself. "Watch, they'll cut a deal with Starr," predicts one Washington defense attorney. "And then in a few months the inside story of the plea negotiations will appear in some papers and magazines. And in those stories Plato will be the hero. And he's the guy who'll have fed them the story."

When I talked to Cacheris, he didn't feed me a thing. To practically every one of my questions, he responded, "I really don't want to get into that"; or, "I'd just as soon not discuss it." But it wasn't a hostile session. Cacheris seemed to enjoy himself, and he fended off my queries in the nicest way. "I'm afraid I'm not very forthcoming," he said gently. "I apologize to you."

Cacheris has every reason to be gracious. Just a couple of months ago, he was on the periphery of this scandal. Two of his oldest and closest friends—Bob Bennett and Bill Hundley—were representing the president and Vernon Jordan, respectively, and Cacheris was left to hunt through the dwindling client pool for a small fry like Vernon Jordan's chauffeur. "It's tough luck for me," he conceded to TNR ("Mining Monica," March 30). But, today, he has the biggest client in town, and he knows that means he doesn't need to say a thing. •

Starr's latest legal adventure.

MUM'S THE WORD

By Simon J. Frankel

Kenneth Starr has brought the concept of privilege into our consciousness in a way not seen since *The Official Preppy Handbook*. And Starr has never met a privilege he didn't wish to abolish—or at least brush aside—in his determined efforts to ferret out purported wrongdoing in the Clinton White House.

This time, the independent counsel's interest lies in several pages of notes taken by James Hamilton, a well-known Washington attorney. In 1993, Hamilton met with Vince Foster, then an attorney in the White House

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counsel's office, shortly after the White House travel-office scandal broke and just nine days before Foster committed suicide. Not surprisingly, the independent counsel would like to know what Foster told his attorney shortly before he died. But Hamilton insists that Foster was only willing to confide fully in his attorney after receiving assurances, from Hamilton, that his remarks would be subject to the attorney-client privilege. Now that Foster is dead, does the privilege still apply? On June 8, the U.S. Supreme Court heard oral arguments in *Swidler & Berlin* v. *United States* and will soon answer this conundrum.

At issue is whether, and to what extent, the venerable attorney-client privilege should continue when the client is no longer alive. The idea behind having such a privilege in the first place is that it fosters more effective legal representation by encouraging clients to confide fully in their attorneys, free from any fear that their remarks could be made public or used against them. The privilege accomplishes this by making such communications immune from compelled disclosure—forever.

Although courts have generally held that the privilege continues after death (outside of certain special exceptions, such as when a client's statements are needed to interpret his last will and testament, a case in which the deceased would likely wish to have his sentiments known), Starr sought to compel Foster's lawyer to turn over his notes. And, remarkably, last summer the U.S. Circuit Court of Appeals for the District of Columbia said that would be all right. Writing for the majority, Judge Stephen Williams held that, in criminal cases, the privilege must give way when the client is dead and there is a particular need for the information that the attorney may have. Judge Williams went on to argue that removing privilege wouldn't affect a client's behavior while he's still alive—after all, Judge Williams explained, a client wouldn't really care what happened after his death.

In a spirited dissent, Judge David Tatel pointed to the obvious flaw in this theory: "One need only count the schools and universities, academic chairs and scholarships, charitable foundations, research institutes, and sports arenas—even acts of Congress—bearing the names of founders, benefactors, or authors to understand that human beings care deeply about how posterity will view them. Evidence of concern for surviving friends and family likewise abounds."

Indeed, Vince Foster is a case in point. There's abundant evidence that he was deeply concerned with possible criminal and civil exposure (of others as well as of himself) that might arise out of the White House travel-office scandal. He was also plainly concerned about his reputation as well as that of his family and his White House colleagues. This sophisticated but troubled client consulted with counsel and, shortly after that, committed suicide. Foster would almost certainly be concerned that his confidential communications remain undisclosed, even after his death. The majority ignored this history and, instead, focused on a perceived need to let the grand jury learn what Foster had told his attorney. In so doing, the court disregarded the fact that the information at issue was likely to be just what Foster did not want to become public when he chose to confide in Hamilton.

Judge Williams's opinion emphasized that, when a client has died, there is no other source for the information. Thus, there is a reason to override privilege. But, if Foster believed privilege would not continue beyond his death, he almost surely would not have confided in his attorney before he committed suicide—and the independent counsel still wouldn't have the information anyway. In the words of a 1981 Supreme Court decision: "Application of the attorney-client privilege ... puts the adversary in no worse position than if the communication had never taken place."

James Hamilton—backed by such groups as the American Bar Association and the National Hospice Organization—has asked the Supreme Court to reverse the Court of Appeals' ruling. It should. And, when it does so, it should also reject some of the troubling conclusions Judge Williams set out in his opinion.

First, Judge Williams suggested that courts could draw a clear line between criminal and civil cases. In criminal cases, he suggested, there is often a compelling need for the information sought—compelling enough to override the court's unusual interest in protecting privilege. But courts applying the attorney-client privilege have, sensibly, never observed such a divide between criminal and civil cases. A client who faces civil litigation may not know whether he will later face criminal prosecution over the same matter. Vince Foster probably did not know if he faced a congressional investigation or criminal proceedings over the White House travel-office scandal. Such uncertainty breeds restraint: Without privilege, clients would often choose not to tell their lawyers confidential information.

In support of Judge Williams's opinion, Starr has pointed to a 1976 decision that carried attorney-client privilege to obvious excess. In that case, the Arizona Supreme Court upheld a ruling that prevented two lawyers from testifying that their client, who had died, had confessed to a capital crime for which another man stood trial. This point cannot be easily dismissed: Perhaps the courts should not prevent attorneys from coming forward, on their own initiative, in cases like these. But that's a far cry from doing what Starr has asked and what Judge Williams has authorized: namely, compelling an attorney, against his will, to provide information that he believes his client wanted protected even beyond his death.

Judge Williams made another significant misstep in adopting a "balancing" approach to weigh the need for confidentiality against the need for communication. As a general rule, balancing tests are troubling judicial creatures. Often, as in this context, they require a court to weigh a specific, concrete "need"—in this case, what Foster told Hamilton—against a theoretical, abstract concept—in this case, the notion that guaranteed confi-

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CORNERING CANCER

The pace of cancer research has entered a phase of exponential acceleration. Scientists are engaged in thousands of new projects to detect, diagnose, treat and prevent malignancies. ❧ The Weizmann Institute of Science in Rehovot, Israel, is part of the thrust. ❧ In years past, Weizmann scientists demonstrated that cancer development is a multi-stage process, and identified the oncogene associated with myeloid leukemia. Today, their research includes magnetic resonance spectroscopy procedures to detect breast cancer... photodynamic techniques for pinpointing chemotherapy... development of a lung cancer vaccine effective in mice... and projects bearing on prostate cancer, ovarian cancer and melanoma. They have also joined the universal pursuit of non-invasive genetic therapies requiring successful identification of genes that induce malignancies and genes that suppress them... notably p53, which Weizmann scientists were first to clone. ❧ All over the world, interdisciplinary cancer research with sophisticated equipment needs the encouragement of public and private resources responsive to burgeoning opportunities.

The Weizmann Institute, founded in 1934, is a community of 2,400 scientists, engineers and scientists-in-training engaged in a full agenda of 1,000 research projects ranging from basic medical research in cancer, AIDS, neurosciences and children's diseases to chemistry, physics, agriculture, computer science and the environment.

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dentiality will lead clients to confide fully in attorneys. And, often, as in this case, the concrete trumps the abstract, even though the latter may have important and long-lasting significance.

The Supreme Court explicitly rejected such a balancing approach in 1996 with respect to the psychotherapist-patient privilege in *Jaffe* v. *Redmond*. There the court explained, "Making the promise of confidentiality contingent upon a trial judge's later evaluation of the relative importance of the patient's interest in privacy and the evidentiary need for disclosure would eviscerate the effectiveness of the privilege." Starr insists, and Judge Williams agreed, that the privilege gives way when there is a great "need" for the information at issue. This ignores a simple but important point: Courts will often find the "need" for otherwise privileged information greatest in just those situations where clients are most likely to be concerned the information remain confidential—and therefore to withhold information from their attorneys where confidentiality is not assured. Surely the privilege does not exist only to protect inconsequential information.

Hard cases make bad law, of course, but politically charged cases do, too. We would all like to know what secrets Vincent Foster took with him to his grave. But the fact that Foster consulted with his attorney before he died should not make this fact-finding any easier. This is one privilege battle Kenneth Starr should lose.

SIMON J. FRANKEL practices law at Howard, Rice in San Francisco and teaches at Bay Area law schools.

THE HARD QUESTIONS

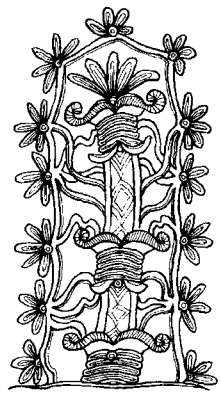
UNECONOMICAL

By Glenn C. Loury

Economists have tremendous influence over policy these days, and, as an economist, that generally makes me proud. But, precisely because of my discipline's considerable clout, it is important to understand its limitations. When it comes to the particulars of governing in a democracy, the economist's view of the world can be narrow and reductive. As University of Virginia political scientist Steven Rhoads has pointed out (in a book aptly titled *The Economist's View of the World*), the single-minded attention to incentives and the pursuit of self-interest that characterizes economic analysis can be a great strength—but it can also be a fatal flaw.

What Rhoads is getting at becomes clearer when one considers that policymaking is not simply about providing technical solutions to the problems of governance. It is also about taking symbolic actions that express the people's values and beliefs. A policy's costs and benefits may pale next to its communicative impact, as any good politician instinctively knows. Yet, what might be called the expressive content of public action—the message to the political community conveyed by the letter of a law, the behavior of a bureaucracy, or the public utterances of a political leader—has no place in the conventional economic model.

For example, we punish criminals not simply to deter crime but also to signal our collective abhorrence of their offending acts. And, conversely, we sometimes mitigate or forgo punishment—even though doing so might blunt the deterrent effect—in order to show mercy or to do justice. Whatever one may think of capital punishment (and I oppose it), the political viability of this practice will never hinge on whether, in fact, it deters murder. The more compelling argument against the state-sanctioned killing of criminal offenders begins by asking, "What manner of people are we, who destroy human life in public rituals of revenge?" This, most decidedly, is not a question about incentives.



Or, to take another example, consider the rightward drift of the welfare debate that ended with Congress passing, and President Clinton signing, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This shift was driven primarily by the desire of many Americans to state, in unequivocal terms, what society can require of public assistance recipients. For most people, such beliefs—about who deserves to be helped and how we should separate public from private responsibilities—have very little to do with analytical judgments. Indeed, even among experienced analysts, one often finds the influence running in exactly the opposite direction—from basic value commitments to conclusions about cause and effect.

Another political scientist, Lawrence Mead of New York University, has raised a complementary argument that warrants mention here. In *Beyond Entitlement*, which appeared over a decade ago, Mead made a persuasive case that many dependent people are too dysfunctional to become self-reliant without substantial and authoritative government intervention in their lives. He has recently edited a collection, called *The New Paternalism: Supervisory Approaches to Poverty*, where a number of social scientists examine how the authoritative approach might be made to work in areas ranging from teen pregnancy to illicit drug use. This book is full of innovative policy ideas that deserve further attention—and not one of these eleven essays makes any use of economic analysis.

The reason for this seeming anomaly is clear. Economics starts from the assumption that individual preferences are given. The "new paternalism," on the other

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hand, makes it a principal objective of policy to alter individuals' views about how to live their lives. Most economists, and many others besides, are uncomfortable with this sort of thinking. This is understandable, and caution is in order whenever government fiat threatens to usurp individual autonomy. Yet, given the array of social maladies in this country, some usurpation is unavoidable. That is, the expressive content of public action can also serve a pedagogic function—by showing disadvantaged citizens how better to lead their lives. This, too, is a consideration that is missing from the economist's conceptual tool kit.

In at least one important policy area, evidence is starting to demonstrate that such "authoritative governance" may in reality be more important than the incentives with which economists are typically concerned. In the early 1990s, some welfare analysts developed an enthusiasm for the so-called "family cap." The idea was to withhold incremental benefits from women already on the rolls who had additional children to discourage them from getting pregnant again. The idea was tried on an experimental basis in a number of states. In New Jersey and Arkansas, where systematic evaluations have been undertaken, the results were inconclusive. There were many technical problems with the implementation of these experiments, but at neither site could evidence be found of any impact on pregnancy among the women subject to the family cap provision.

A more authoritative intervention was undertaken in the small, semi-rural community of Elmira, New York. There, in 1977, some 400 mostly low-income expectant mothers were enrolled in an experimental program designed to test the impact on mothers and children of regular home visits by professional nurses. For some of the women, visits occurred weekly for six weeks after their baby was born and then twice each week until the twenty-first postnatal month. The nurses followed a detailed protocol during the 90-minute visits, focusing on personal health and effective parenting concerns. A major objective was to help mothers use a reliable method of contraception, and at this the program succeeded admirably. Compared to a randomly selected control group of similar women, those visited by the nurses had a 42 percent lower pregnancy rate during the four-year period after the delivery of their first child. Beneficial effects from the home visits on both mothers and children were found in a follow-up study conducted in 1992, 15 years after the program had been initiated. Similarly impressive effects of nurse visitations are being observed among inner-city mothers in Memphis, in a still-ongoing study that began in 1990.

The success of home visitation seems to be due to the fact that the nurses got the message across that becoming pregnant again is not desirable. As *The Washington Post* reports: "The old strategy has been to say, 'If you want to avoid a second baby, here's a condom and how to use it.' The directive approach says, 'You shouldn't have another baby, and here are ways to prevent it.'" One thing is clear. You can't get that kind of message across with economic incentives. •

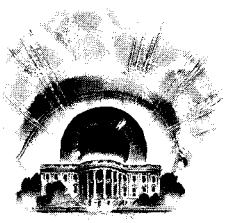
WHITE HOUSE WATCH

BUSINESSMAN

By Dana Milbank

Flying to the Motor City last month for a speech to the Economic Club of Detroit, the vice president could have been forgiven for thinking the economic gods were against him. For six years, Al Gore had toiled in the vineyards of economic policy, pruning bureaucracy and weeding regulations—while President Clinton grabbed all the glory for the nation's prosperity. Business leaders, sore about Gore's energy tax and his call for the demise of the internal combustion engine, still didn't trust him.

And here he was, about to set everything right in his most important economic speech in years—and what happens? Chrysler goes and messes everything up by selling itself to the Germans. The mega-merger, announced the day before his speech, was sure to overshadow Gore's economic coming-out in Detroit. "I don't know who does your scheduling," Gene Sperling, the president's economic policy adviser, joked to the vice president. Sure enough, the only substantial coverage was a *Washington Post* story that noted the businessmen's predictable skepticism and rubbed it in by observing that industrialists are more suspicious of the vice president than of his boss.



But the little-noted speech was an important event in the shaping of Gore's 2000 presidential run, for it offered a blueprint of what will soon become Goronomics—and it signaled how the Clinton administration plans to promote its heir apparent. In a sign of things to come, Clinton, breaking with custom, allowed Gore to announce the monthly Labor Department figures—in this case, the lowest unemployment in 28 years—rather than taking the credit for himself. When Clinton heard that the employment figures would come out on the day of Gore's speech, he told a meeting of advisers, "I want Al to announce them." On the day of the speech, the White House sat on the figures for three hours so Gore could break the news. The Gore speech also made clear that the candidate won't soften his position on free trade in order to pander to labor or to defend himself against the likes of Dick Gephardt.

But, most significantly, the speech indicated how Gore plans to patch up his environmental rift with business—a rift that poses a serious threat to his candidacy. Asked about that very matter at the Detroit speech, Gore, who in 1992 famously called for "completely eliminating the

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internal combustion engine," appeared to spout the same old claptrap that got him into trouble with business in the first place. "No car company will be able to thrive in the twenty-first century if it relies solely on internal combustion engines," he said. Only this time there was a difference. The words were not his, Gore told them, but those of then-General Motors Chairman John Smith. The implication was clear: Being pro-environment is no longer inconsistent with being pro-business. The enviro-Gore of yore is now the econo-Gore of today, a business-friendly Gore who, as president, will be the capable shepherd of growth and prosperity.

The vice president, Gore-watchers say, is entering a new phase. Early on we saw the arms-control Gore, then the information-superhighway Gore. Later came the Earth-in-the-Balance Gore and the reinventing-government Gore. Now econo-Gore has come to the fore, and he's talking about it everywhere, turning himself into an amateur economist. "When you talk to him about what's going on in the world, it's the economy," says Bob Squier, a friend of the vice president's and an adviser. "This is something he's been doing a lot of homework on. If you see a speech like that from Gore, you know he's grappling with the issue." Gore, who repeated much of his Detroit speech in a New York University commencement address six days later, plans to unveil another version of the speech in Washington next week. Last Friday, he hosted nine CEOs from top companies at a White House "Business and Entrepreneurial Roundtable on Community Empowerment." On June 24, he speaks to the Business Roundtable's annual gathering in Washington, and he's been chatting with Wall Street types—a departure from his usual coterie of Silicon Valley techies. He's also been working on a speech about the Asian financial turmoil.

Gore's economic coming-out is part of a broader plan to define a vice president who, despite universal recognition, remains resolutely undefined. Gore friends and strategists are looking for a strong identity for him that will stick in voters' minds—lest he end up like George Bush, whose lack of definition got him tagged as a "wimp." But, so far, says HUD Secretary Andrew Cuomo, "I don't have it down to a bumper sticker." This is particularly true when it comes to economics, where Gore's stances have defied easy pigeonholing. As a congressman and later as a senator, Gore had a relatively liberal voting record on issues like taxes and regulation. But within the White House his has been a generally conservative voice in economic debates.

Of course, one reason Gore has such a low profile on economics is that, quite simply, that's the way the administration has wanted it. Clinton, who ran almost entirely on the economy, has jealously presided over just about every release of economic good news. Gore, though he's one of the few constants in an administration that has frequently shuffled budget directors, economic advisers, and cabinet appointees, has done his work largely offstage. He was the one who convinced Clinton to fight to the death for the 1993 budget package, for example, and he had a big role in persuading Clinton to put a balanced-budget plan on the table in 1995, which set up the White House's victorious showdown with Congress.

Now Clinton is ready to share some of the credit. For example, in his remarks celebrating the projected $39 billion budget surplus, Clinton, departing from his prepared speech, praised Gore's efforts to streamline government, which have purportedly saved $137 billion so far. White House officials say they plan to have Gore make more economic announcements for the administration; they also plan for him to take the lead on the next fight over a minimum-wage increase. All of which is just fine with Gore, who is doing everything he can to tie himself to Clinton's economic policies—at least as long as the economy keeps humming.

Already, Gore has indicated that he'd like to keep much of Clinton's economic team in place. Sperling and Larry Summers, the deputy Treasury secretary, both coached Gore on his Detroit speech, and both men are expected to stay on in a Gore administration, though they don't say so themselves. Others who have contributed economic advice are Cuomo, Elaine Kamarck, who was Gore's senior policy adviser before she left to teach at Harvard, and Princeton economist Alan Blinder, who was Federal Reserve vice chairman until 1996. Clinton political henchman Paul Begala, a former Gephardt employee, has been helping Gore protect himself from protectionist critics.

The central part of Gore's economic message, a five-point plan he laid out in Detroit and at NYU, so closely mirrors current administration policy that one Gore loyalist calls it "Clinton II." It includes the continuation of "fiscal discipline," a vow to fix Social Security and Medicare while the economy is strong, a pledge to push on with regulatory reform and "reinventing government," a push for free trade, and a call for more investments in research and development. To that five-point plan Gore adds his other two fascinations: fostering the high-tech "new economy" and pushing "empowerment zones" as an answer to poverty.

Gore is determined not to back down from the Clinton free-trade position: Gore strategists figure the potential damage to the public's perception of his character from giving in to the protectionists would be worse than incurring their ire. They're also figuring that, barring an economic downturn, the economic nationalism of Gephardt and Patrick Buchanan will seem increasingly archaic two years from now. To be sure, the unions won't be thrilled, but Gore is counting on strong labor backing because of his other stances—such as his enthusiastic endorsement of labor's right to organize. And Gore can always draw on his ties to influential union officials like Gerald McEntee, president of the American Federation of State, County, and Municipal Employees.

Gore advisers are more worried about the perception that his environmental stands make him hostile to business and economic growth. They plan to counter

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that perception in two ways: by arguing that industry, over the last six years, has come to see the business sense of environmentalism itself and by proving, subtly, that Gore has smoothed his rough edges on the environment during that same time. Gore's use of the quotation from General Motors' own chief helps with the first part of the strategy. It shows that, just as information companies have become the engines of the new economy, so has industry—eyeing the environmental woes of the post-Communist countries—realized that pollution won't bring them profitability. Gore will argue that a company's environmental structure is every bit as important to the bottom line as its financial or operational structure. As one White House official puts it: Gore "makes the argument implicitly that the world has come around to him, goddamnit."

What Gore also must do, although he probably won't say so, is convince business that he has changed, too. In Detroit last month, he rhapsodized about the automobile. "Cars have freed the American spirit," he said. He boasted about how his efforts cut 16,000 pages of federal regulations and 640,000 pages of internal rules. He called for regulatory reform so that regulations are done "in the least burdensome, most cost-effective way." Gone are ideas like a BTU tax, replaced with market solutions like emissions trading and research subsidies to develop technologies to reduce global warming. It's not the kind of stuff that makes environmentalists particularly excited, but it's precisely the kind of policies that reassure nervous businessmen. "There's a difference between the Al Gore who wrote *Earth in the Balance* and the Al Gore of now," says Blinder. "He's very eager to find ways to approach environmental issues in ways that don't harm American business." Or Al Gore's chances in 2000. •

Yeltsin's failed presidency.

BUNGLING BORIS

By Anatol Lieven

With support from the Clinton administration and the International Monetary Fund, the Russian government in recent days appears to have beaten off the immediate threat to the Russian ruble—which is fortunate, since forced devaluation and consequent inflation could have led to an Indonesian-style economic and political meltdown. The new prime minister, Sergei Kiriyenko, has shown a cooler head and steadier nerves than one would expect from such a newcomer to government.

But the underlying causes of Russia's financial fragility and economic weakness remain. Sooner or later they are bound to lead to renewed crisis. And, as the time for key decisions concerning the presidential elections of 2000 approaches, we need to recognize that among the fundamental causes of Russia's misfortunes are not just the Soviet legacy and the past policies of the Yeltsin administration but the character of Yeltsin himself. Let us be quite clear about it: Given his record, it would be grotesque for Yeltsin to run again for president in 2000—as he is all too clearly now planning to do. And, if he runs, it would be a grave mistake for the West to support him as it did against the Communists in 1996.

In fact, beating the Communists has been Yeltsin's only real achievement in the past five years. His most important actions have been to launch the appallingly bloody and incompetent war in Chechnya and to pass control of most of Russia's raw materials to private hands for a fraction of their market value—something that lies at the very heart of Russia's permanent budget crisis. Other than that, it is impossible to identify a single significant government success. Year after year, the administration—as well as naïve or self-interested Western observers—has predicted that economic growth is just around the corner. Year after year, the predictions have not come true.

Yeltsin's failure lies in what he has neglected to do as well as in what he has done. The constitution he pushed through in December 1993—in what was almost certainly a rigged referendum—establishes a presidency vastly more powerful than the government, let alone the parliament. (Of the pathetically impotent third "power," the judiciary, we need not even speak.) Ministers report to the president as well as to the prime minister, and, if the president does not exercise strong, consistent leadership, this provides almost limitless opportunities for feuding and evasion of responsibility. This, then, is a presidency that governs as well as rules, and it has to if the system is to work effectively.

And Yeltsin, even when in good health, has never been willing to govern on a day-to-day, or even month-to-month, basis. He has intervened forcefully to get his way when his own authority has been at stake—as when he pushed through the appointment of Kiriyenko against the resistance of the parliament—but he has not given any serious personal attention either to formulating or to supporting a whole array of absolutely vital reforms. If Yeltsin had devoted a fraction of the energy he gave to appointing Kiriyenko to passing laws allowing foreign ownership of industry or privatizing agriculture then, given his powers, those laws would have gone through. Often, indeed, Yeltsin's desire has seemed to be not to unite the administration and make it more efficient but to set its members against one another so as to secure his own position. This has been particularly true of his treatment of Russia's numerous and mutually hostile security forces.

It may be argued, not unfairly, that, given the

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appalling problems inherited from the Soviet Union, the entrenched power of conservative forces, and the explosion of corruption, it would have taken titanic energy on Yeltsin's part to make a real difference. And, after all, Russia is not doing any worse than Ukraine, for example, where President Kuchma is several years younger and more hands-on.

But the comparison with Ukraine is an instructive one, for it reveals the worst stain on Yeltsin's record. Russia, unlike Ukraine or the former Communist states of Central Europe, possesses some of the world's greatest resources of exportable raw materials—oil, gas, and minerals. Under Soviet rule, the profits of these went to propping up a row of economic basket cases among the Soviet Union's ideological allies on the world stage, to financing a grotesquely overblown military structure, and to paying for the intervention in Afghanistan. Even allowing for the economic chaos the Soviet breakup produced, the end of these burdens should have meant the Russian state had enough money to invest in economic development while keeping taxes at a reasonable level.

Instead, the Yeltsin government handed control of a very large proportion of these resources (though not gas, which remains in the hands of the semi-privatized monopoly Gazprom) to a handful of big bankers in the autumn and winter of 1995—and he did it for a tiny fraction of their market price. This was ostensibly done under a "loans for shares" agreement in return for loans from these banks to fix the Russian state's faltering finances. Overwhelming circumstantial evidence, however, suggests that the key aspect of this deal was to buy the bankers' support for Yeltsin's reelection campaign in 1996. This cost the Russian state tens of billions of dollars in lost revenue from privatization and in lost taxes from the industries concerned, which their new masters have routinely evaded. And the responsibility for these losses lies squarely with Yeltsin himself and his former privatization minister, Anatoly Chubais.

An additional tragedy is that, from 1995 to 1996, high oil prices meant that the Russian state could have fetched a very good price for its oil companies, especially if it had thrown them open to international tender. Today, it is finally determined to ask a high price for its last big company, Rosneft—but now it cannot get one. So desperate is the Russian state's fiscal position that now there is even talk in Russian official circles of renationalizing the oil companies in a last-ditch attempt to raise revenue. They would then be sold again, at some later stage, for their real market value—though, once again, foreigners would probably be barred from taking a majority stake. Although such a move would undoubtedly draw strong criticism from the West, the Yeltsin government assumes that Western fears of a Russian meltdown are such that the West, via the IMF, will keep sending aid anyway.

However, it is not the West's reaction that the Yeltsin administration would have to worry about but that of the new owners themselves. It seems highly questionable whether the Russian state—under Yeltsin and perhaps under anyone—is now strong enough to carry out any such policy in the face of fierce opposition from the new elites. Under Yeltsin, Russia has in fact become a weak state dominated by a "comprador" oligarchy that makes its money from the export of raw materials and then puts the profits into conspicuous consumption or Swiss bank accounts. It is, in other words, much more like some of the past regimes in Latin America than anything previously seen in Russia. The frequent comparison of the Russian elite to nineteenth-century American robber barons has so far been an empty one and seems likely to remain so. The robber barons founded their industries and reinvested the profits in the United States. The new Russian comprador magnates have simply exploited existing Soviet industries; they have neither founded anything new nor, in most cases, reinvested the profits.

Yeltsin could face two strong challengers in 2000: General Alexander Lebed or Moscow Mayor Yuri Luzhkov. While both have their worrisome aspects, both are pragmatists, and Lebed at least certainly can not be portrayed as an ultra-nationalist. After all, it was Yeltsin who started the Chechen war—and Lebed who ended it. Both have demonstrated their electoral potential, Luzhkov by winning an overwhelming majority in the Moscow elections of 1996, and Lebed by winning the gubernatorial elections in Krasnoyarsk last month in the face of tough opposition from both the Yeltsin administration and the Communists. If the Russian economy fails to improve, or collapses further, then Yeltsin would stand little chance of beating either of them in a fair poll.

Of course, Yeltsin has astonished us before with his capacity for bouncing back from an apparently hopeless situation, and he may do so again. But, in a race against Lebed or Luzhkov (or both), that would probably mean rigging the election so that, in the runoff, Yeltsin would once again face a Communist challenger. This would guarantee Yeltsin the support of Russia's elites and the West, who would find communism unacceptable. But even if rigging worked—and it might fail, amid dangerous unrest—this would not only be a travesty of democracy; it would condemn Russia to four more years (assuming Yeltsin lived that long) of economic and political drift. From the point of view of both Russia and the West, either a Lebed or a Luzhkov presidency would be better than that.

One may differ as to whether, because of her history and culture, Russia needs a strong leader in principle. What is certain is that the system that Yeltsin has created needs a strong leader—and Yeltsin has failed to live up to his own requirements.

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Stormy times in German politics.

THUNDER ON THE RIGHT

By Jacob Heilbrunn

Magdeburg, the capital of the German state of Saxony-Anhalt, is a small, ugly, industrial city located about 90 miles from Berlin in the former German Democratic Republic. Since the collapse of the Communist state, it has been the scene of dozens of attacks by beer-swilling skinheads against foreign workers and asylum-seekers. Until now, it was possible to write off these acts of violence as sporadic episodes with no real implications for the German political culture. (I myself did so several years ago in TNR. See "What German Crisis?" December 21, 1992.) But no longer. In last April's election for a new state parliament, the German People's Union (DVU) won 13 percent of the vote on an anti-foreigner and anti-European Union platform. Those who voted for the DVU were disproportionately young and *not* unemployed; they cast their votes for the party despite the fact that it is still under surveillance by the German federal agency that monitors extremist political groups.

The upshot is that once-obscure Magdeburg is now the epicenter of a small but unsettling challenge to the rules of Germany's democratic game. In May, I traveled to Magdeburg to attend the opening of the new session of parliament with its freshly elected ultra-rightist members. The atmosphere was tense. Police vans encircled the resplendent eighteenth-century parliament building, which was fenced off by metal barricades. I had to show my passport just to get into the square outside the parliament. As they entered, journalists were frisked by security. Adding to the unease was the fact that the Social Democratic Party was about to form a state government with the support of the Party for Democratic Socialism (PDS), the former East German Communists.

As the new legislators from the DVU filed in, the other members of the parliament averted their eyes. In accordance with long-standing tradition the oldest member, in this case 69-year-old Rudi Wiechmann of the DVU, delivered the opening speech of the session. But then the PDS's pert leader, Petra Sitte, marched to the podium to declare that "we refuse to recognize" the speech by Wiechmann. An uproar ensued. Helmut Wolf, the head of the DVU, countered with a ten-minute harangue in which he denounced both the Socialists and the PDS as "Bolsheviks." "Whoever supports the Bonn-euro craze will meet the wrath of the people," continued Wolf. His party would bring about the "domination of the *Volk*." Delegates would have to explain what their actions were—"if it has to be at night by telephone." When the session was over, Christoph Bergner, the head of Chancellor Helmut Kohl's conservative Christian Democratic Union in Saxony-Anhalt, told me: "I was astonished. We have experienced the whiff of Weimar here."

That's hyperbole. Germany's current democracy is over five decades old, and it is far more stable than the fragile one the Nazis (as well as the Communists) ganged up on back in the '20s and '30s. Still, the developments in Saxony-Anhalt come at a delicate moment. Despite Kohl's reunification promise of a "blooming landscape," the reintegration of the East has not gone smoothly. Unemployment there continues to hover around 20 percent, and Saxony-Anhalt has the highest rate of any state. When East Germans see workers from low-wage countries of the European Union such as Spain or Portugal working on German construction projects, they become livid. Skinheads have repeatedly attacked such workers, and the local population has cheered them on. Then there is the hostility of Germans in the East to giving up the Deutsche mark to European currency union—the D-mark bought their support for reunification in the first place.

In the West, tensions over foreigners and squabbles over the past have surfaced as well. Germany has witnessed a major public dispute over the touring of an exhibition titled "Crimes of the Wehrmacht." The exhibition, which was created by the Hamburg Institute for Social Research, displayed graphic photos of ordinary German soldiers massacring civilians—shattering the myth that only the SS, not the Wehrmacht, carried out atrocities. The conservative *Frankfurter Allgemeine Zeitung*, however, decried the show, and clashes between left- and right-wing Germans took place outside the exhibition. There has also been a rash of highly embarrassing neo-Nazi episodes in the German army—known as the *Bundeswehr*: German magazines have been filled with pictures of soldiers saluting pictures of Hitler and holding up Nazi flags. The head of the Jewish community in Berlin, Andreas Nachama, has denounced the former *Bundeswehr* general and current Christian Democratic interior minister of Berlin, Jörg Schönbohm, for saying

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that "there are quarters in Berlin where one doesn't know whether one is in Germany anymore" and for extruding from their "ghettoes" foreigners who refuse to assimilate.

With such episodes as a backdrop, the federal election campaign has already become the most contentious in decades. It seems likely that in September voters will finally retire Chancellor Helmut Kohl, who has been their familiar, if stolid, leader for the last 16 years, in favor of the Social Democratic candidate, Gerhard Schroeder. Kohl's party has responded to the challenge of the future-oriented Schroeder by returning to the past: it is running a cold-war-style campaign painting the Social Democrats, West and East, as in cahoots with the Communists. One of the Christian Democrats' campaign posters, for instance, shows a picture of two red hands clasping each other—an evocation of the forced union in East Germany in 1946 between the Communists and Socialists. The Social Democrats meanwhile promise that the cooperation between the former Communists and Socialists in Magdeburg will not be repeated on the national level.

Ironically, in focusing on the "Communist threat," Kohl and his rivals are ignoring the real novelty in Germany: the rise of a self-confident, assertive nationalist right. The question is no longer whether a new right will emerge in Germany (it already has) but whether Germany's entrenched political elites will address the issues the right exploits or remain oblivious to them.

The German political class's response, or nonresponse, to neo-nationalism thus far has been a function of deeply ingrained attitudes left over from postwar West Germany—a consensus-oriented democracy that shunned debate and feared an uncontrolled level of politicization among the citizenry. The *Wirtschaftswunder,* or economic miracle, presided over by the first West German chancellor, Konrad Adenauer, bought social peace and made West Germany the most successful state in Europe. In essence, the German government arranged a social compact with the population that provided lavish social services in exchange for political quiescence. The lesson that German leaders, whether Christian Democrats or Social Democrats, drew from the Weimar era was that only a social welfare state could suppress nationalism.

As chancellor of a reunited Germany, Kohl sought to continue these policies even though the conditions that had allowed the country to pursue them had vanished. West Germany could afford to hand out social benefits without incurring huge budget deficits; the job of building up the East has cost the government $85 billion per year in transfer payments with no end in sight. West Germany enjoyed a buffer against Poland and Russia in the form of East Germany; a reunited Germany is on the front lines of Eastern Europe. Now a reunited nation-state, Germany has been thrust back into a central role in Europe.

The result has been a two-pronged assault on the old Bonn republic. The first assault has come from German new right intellectuals, who have begun to reformulate older concepts of German nationhood and identity. Their argument is that a culture of contrition over the Holocaust that precludes the rational examination of contemporary political issues has taken hold in Germany. Everything from the euro to the asylum issue is viewed through the lens of the Holocaust, they say.

The initial wave of this thinking came in 1986, when the historian Ernst Nolte published an essay in the *Frankfurter Allgemeine Zeitung* titled "The Past that Will Not Pass Away." Nolte attempted to relativize the uniqueness of the Holocaust by claiming that Lenin's Red Terror was a dress rehearsal for it.

Nolte was excoriated at the time. But, since the reunification of Germany, such thinking has surfaced again and again. The publication of the French *Black Book of Communism,* which compares Nazism and communism and totes up the number of victims of Communist regimes, has become a best-seller in Germany. The dominant trend in Germany is to see the Germans themselves as victims—victims of totalitarianism in the form of the Soviet occupation of East Germany. Ermano Meichsner, an official in the ministry of culture in Saxony-Anhalt, says that there is "a latent sympathy in eastern Germany among adults for the actions of the skinheads." He observes that the *Black Book of Communism* has prompted some East Germans to start referring to the *Bolshicaust*—the "Bolshevik Holocaust."

For democratic neo-nationalists such as Arnulf Baring, a professor at the Free University of Berlin, comparing East Germany's suppression by the Russians with Nazi Germany is a good thing; an excessive German preoccupation with the past, he insists, has crippled it in dealing with the present. In an important new book titled *Will Germany Fail?* Baring writes that "the problem of the many foreigners living here belongs to the most important, greatest taboos.... When the German past is spoken of here, we think almost compulsively only of the twelve years of Hitler's barbarism and hardly at all of the almost thousand years that we in the middle of Europe have often impressively helped shape." Startling as it may sound, this diagnosis is not completely wrong. But where such intellectual broadsides may lead at the level of public opinion and electoral politics is more disquieting.

For the second assault on the Bonn republic is being launched by Munich multimillionaire Gerhard Frey and his German People's Union. Frey, the publisher of the *Deutsche National-Zeitung,* spins in his own peculiar political orbit. He cut his teeth on right-wing ideology. His father was a member of the counter-revolutionary Free Corps that wiped out thousands of Communists in 1918–19. In 1971, Frey *filius* founded the People's Union, and it has since replaced the National Democratic Party as the preeminent right-wing organization.

Frey's success lies not merely in his ability to tap into German grievances over asylum-seekers and the intro-

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duction of the euro as a common currency but in his adroitness in making use of new computer technology. His party exists mainly on the Internet; in order to attend meetings, you have to give your address to the party, whereby you receive a secret Internet code. This makes it difficult for the government to track the party's activities.

German officials with whom I spoke often dismissed the People's Union as a "virtual party," but that seems to be the point. The People's Union does not have a formal party structure; it represents an unabashed, modernized right. On the evening that I arrived in Saxony-Anhalt, for instance, I saw a local television debate in which the young People's Union representative was stylishly dressed in jeans and avoided any harsh rhetoric, focusing instead on the need to combat unemployment in the region. The CDU representative, meanwhile, looked stiff and stodgy in his suit and tie. As part of his campaign tactics, Frey had two airplanes flying daily over Saxony-Anhalt, trailing DVU banners. Placards were posted on almost every street corner in Magdeburg—20,000 in all. Perhaps the most effective tactic the party used was an American one: direct mail. Some 1.2 million letters were targeted at voters between the ages of 19 and 29 and those over 65. In a matter of weeks, the DVU zoomed ahead; the Green Party and the liberal Free Democrats, Kohl's longtime coalition partners, didn't get into parliament.

Of course it wasn't tactics alone that swept the People's Union into parliament; the party had a political message that stuck. Like Pat Buchanan or Ross Perot, Frey is leading a populist nationalist movement against "the establishment." East Germans, who are not psychologically tied to the old Federal Republic, are particularly receptive to it. The truth is that many Germans in the East loathe both foreigners and the European Union. Even politically moderate easterners such as Jürgen Reinking, a Social Democratic official in Strausberg, say that the euro is a "disaster" and that too many foreigners are being dumped into German municipalities. In Reinking's view, current policies are playing into the hands of the right; like many others, he predicts that the People's Union will enter the state parliament of Mecklenburg-Vorpommern in the fall.

But eastern Germany is not the only fertile territory for the right. It has begun to make inroads in the West as well. Until now, the taboos against supporting the right have functioned effectively. Ignatz Bubis, the head of the German Jewish community, observed at a conference of the American Jewish Committee held in Berlin a year ago that "in the last few years in Germany one might think that the order of magnitude is between five and eight percent for all the right-wing parties together. That's deceptive." About 17 percent of the population, said Bubis, is ready to contemplate voting for right-wing parties. "It's still a kind of taboo. What matters is that the authorities say: You're not allowed to be a right-wing extremist today!"

But those constraints have begun to erode. This is partly a normal consequence of reunification; historians are bound to reinterpret the Nazi past now that reunification has shown that Germany was not doomed to division in perpetuity as punishment for the Holocaust. It is also the result of eastern Germany's "re-Prussianizing" effect on the West, as some Germans half-jokingly like to say. On the electoral level, the People's Union almost made it into the Hamburg state parliament. One pollster told me that, as the party's vote total mounted, the voting slips were scrutinized with greater care so as to ensure it wouldn't get enough valid ones to enter parliament.

There is also a shift toward the right among the youth; a Hamburg mother, who told me that she was a proud member of the '68 generation, complained that her son has adopted conservative attitudes as a form of rebellion. "Just be glad he hasn't gone over to the skinheads," his father told her. In a poll that caused a stir in Germany, the Center for European Education Research at the Free University of Berlin carried out the most extensive sample yet of the attitudes of youth toward extremist parties. The researchers questioned 6,600 Berlin youths in high school to arrive at the conclusion that the majority would rather vote for an extremist party on the right or left or none at all. The study also showed that the notion that voters for the right are simply protest votes is false. Instead, votes for the left tend to be mere protests, while those for the right are cast out of conviction. The highest proportion of support for right-wing parties came from youths in the East; 20 percent said they would support a radical right-wing party.

At bottom, in western Germany, a revolt is taking place against the '68 generation that first created a culture of contrition in Germany. The self-styled generation of '89ers sees the fall of the Berlin Wall as the end of utopian dreams of equality; instead, a competitive society is supposed to be created. In a sign of generational change, two new editors have taken charge at Germany's major papers in the past year: Roger de Weck at *Die Zeit* and Mathias Döpfner at *Die Welt*. The challenge will be for papers such as *Die Welt* or the *Frankfurter Allgemeine Zeitung* to define and defend a democratic conservatism.

As Germany heads into a tumultuous election period, however, the prospects for the far right look increasingly favorable. The September national election seems likely to lead to a "grand coalition" government made up of the Social Democrats and the Christian Democrats. If this government drags its feet about desperately needed economic reform, the Federal Republic could remain stuck in a time warp while the right attacks it. The afternoon I left Magdeburg, a lonely band of leftists marched through the city denouncing Frey and company. Back at the parliament, the People's Union was moving into its new offices on the top floor. Whether the DVU will actually be able to move into the federal parliament for its first session in the refurbished Reichstag in Berlin remains unclear. But Reinhard Schlinkert, one of Germany's leading pollsters, puts it this way: "All they have to do is distribute flyers outside of supermarkets in neighborhoods where asylum-seekers are quartered." •

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BOOKS & The Arts

Stanley Kauffmann on Films

Caught in the Act

Samuel Beckett's short film called *Film* is about a person's being perceived. *Esse est percipi* is the picture's motto; to be is to be perceived. *Film* shows us a man, played by Buster Keaton, trying to avoid being looked at, fleeing it, and finally discovering, to his horror, that it is impossible to escape being seen. Beckett's work, then, is a small agon of the entanglements of living and a sly dig into the metaphysics of film itself.

We know, and we relish the knowledge, that a film character is not alone even when he may glory in solitude. He wouldn't be there except so that we can see him. This large encircling paradox often tempts us to consider how the character (not, of course, the actor) would react if he knew he were being watched. His horror might at least be the equal of Keaton's.

The Truman Show (Paramount) is a reminder of the Beckett theme. The screenplay by Andrew Niccol starts from something like Beckett's abstraction and reifies it with details of contemporary culture, then moves on into fantasy.

The basis is simple and sickening. Truman Burbank is a thirty-year-old insurance salesman who lives on a street of tract houses with his magazine-ad wife and neighbors. This good-sized community is on a big island. There's one point of marital disagreement early on. Truman's wife wants a baby; Truman wants to travel, and he dreams of Fiji.

The audience is warned from the start that Truman's cookie-cutter life is in some way extraordinary; the very first shot is of a TV director, played by Ed Harris, commenting on what we are about to see. At first this is a bit puzzling, but gradually we understand, helped by the fact that many shots of daily doings in Truman's life are framed as if on a TV screen. It becomes clear that absolutely every moment of every day of Truman's life is being watched by hidden TV cameras and is being broadcast on "The Truman Show," which is an international hit. What's more, the film begins on Day 10,909 of the show. It has been going on since his birth.

Truman himself knows nothing about the show. Nothing. Every other person whom we see, except one, is rehearsed and programmed for TV, including his lovey-dovey wife. Every person in the street or in his office is, knowingly, part of "The Truman Show." (So, though he is unaware of it, Truman isn't really living a real life.) When he eventually finds out about all this, his reaction is like Keaton's, except that his horror moves him to action.

Truman hasn't known about his TV show because apparently it isn't broadcast on this island. He sees only the local paper. He isn't aware of the Truman T-shirts or the Truman bars where people gather to watch his show. A graphic reason is supplied why he never leaves the island.

We understand why Truman's new itch to travel is opposed: it would take him off the huge TV stage, and it would inform him about the show itself. But he begins to suspect, anyway. A theater-lighting fixture falls from the sky into the street in front of his house. In a storm at the beach, a shaft of rain hits him like the beam of an overhead spotlight, and when he moves, the beam moves with him. More clues to his TV existence soon follow. (The TV director's control of the elements is godlike. My favorite line in the script comes when, in the gigantic spherical TV control room, the director barks at an assistant, "Cue the sun!"—and the sun comes up on Truman's island. Note that the name of the TV director is Christof.)

Most of our questions about the plot are answered as the film proceeds, but we shrug them off anyway, answered or not. We don't want the fantasy interfered with because it keeps striking home ferociously. It doesn't take long to see the dark underside of the film's theme: the captive of TV isn't Truman, it's the audience. Us. And our love of that captivity, the gobbling of shows—fictional drama or news or sports or politics, but always *shows*—engulfs us. We used to go to theaters and films; now, more seductively than radio, TV comes to our homes, entwines us. (And is paid for, in "The Truman Show," not by commercials but by "product placement." We see the brand name on a six-pack, etc.) The shows don't have to be dramatic, as "The Truman Show" and most TV attests. They need only be shows, life outside transmitted to the TV screen inside.

Toward the end, after Truman discovers that his entire life is a show, Christof is at first not worried because he thinks that the imprisoned protagonist likes his "cell." When Christof learns otherwise,

FILMS WORTH SEEING

Beyond Silence. *A normal child has two deaf parents. The linkages and schisms that this fact creates are the stuff of a delicately acted German drama. (Reviewed 6/22/98)* **Bulworth.** *A senator running for reelection suddenly starts speaking truths about race. Funny, sharp, pyrotechnical. Warren Beatty cowrote, directed, and stars. (6/8/98)* **The Horse Whisperer.** *Robert Redford directed and stars. A pleasant, if predictable, tale about how a Montana rancher restores the spirits of a damaged child and her horse. Montana is magnificent. (6/15/98)* **Wilde.** *Elegant Stephen Fry and an accomplished cast reenact Oscar's venture into homosexuality and the dire results thereof. Well sustained. (5/18/98)*—**SK**

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he warns Truman that if he leaves he'll discover that life outside the enormous TV stage is no more real than within. (Discomfiting, when we see how the office chat on the TV show resembles the chat rituals of all offices.) But Truman, something like Keaton, would rather not be perceived; and his urge is seconded by the one non-TV person among the principals, a young woman who truly loves him, who has been watching the show and hoping.

Despite its grim reminder of our media slavery, *The Truman Show* refreshes. Besides its novelty of subject (although I'm sure science-fiction experts could cite antecedents), it has dash and daring. The director—of the *whole* film—was Peter Weir, the Australian whose career has ranged from *Gallipoli* to *Witness* to *Dead Poets Society*, and who is adroit here in letting the TV presence in Truman's life seep into our awareness. We learn that 5,000 small hidden TV cameras are watching Truman everywhere, always, so we can appreciate some of the queer shots we have seen—like, for instance, one through the digital clock on the dashboard of Truman's car.

A lot of blather has erupted about Jim Carrey's performance as Truman. My own view of it is, in a sense, negative: at least Carrey has omitted almost all the muggings and cavortings by which he prospered. Weir has sheared off most of Carrey's high-school exhibitionism, and, in any case, the script itself helped to keep him from being unbearable. Whether this new-found restraint proves that he has undiscovered depths and possibilities is a question. But of course we can hope.

Laura Linney, as Truman's wife, supplies the requisite steel under the chick-abiddy surface. Natascha McElhone, as the true young woman, endows the film with its one soft touch, a scent of romance. The cinematographer, Peter Biziou, veteran of such eccentric numbers as *Bugsy Malone* and *Life of Brian* and *Time Bandits*, suggests subtly from the start that all this world's a stage. •

Robert Brustein on Theater

Stephen Sondheim's Progress

Stephen Sondheim has long been an idol of sophisticated musical comedy enthusiasts. If the adulatory books written about him over the past fifteen years are any criterion, however, the man is something far more important than a Broadway cult figure. Barely sixty-eight and still turning out musicals every two or three years, he is now considered a legend, if not one of the most significant figures in the history of Western music and literature.

This, at least, is what is implied by the nature and the reach of recent Sondheim scholarship. The bibliography of Stephen Banfield's painstaking analysis of the composer's music and lyrics, *Sondheim's Broadway Musicals* (1996), identifies more than 230 items of related Sondheim material ("The Metaphor of Paradox in Sondheim's *Company*" is a typical title). This sort of thing suggests that Sondheim research has become a cottage industry for scores of tenure-track scholars. Feminist, gay, and gender theoreticians applaud his ambiguous sexual themes. A brand new field of "melopoetics" has been contrived to analyze his musical innovations. And, in the midst of such labors as examining the "phrygian matrix" of *Pacific Overtures*, Banfield has identified Sondheim as an archetypal postmodernist because of "his playful ambiguities, self-referential structures" and his "redrafting of the contract between writer and reader."

Wait, there's even better stuff. Listen to a few bars of a long scholarly riff where Banfield descants on "Sondheim's philosophy and its instinctive relationship to the modernist apprehension of Hegel and Kierkegaard ... (committing oneself neither wholly to the notion of 'both/and' nor wholly to the notion of 'either/or' but as it were to both)." Where is Pope when we need a *Dunciad* for our times? Artists such as Sondheim are hardly responsible, of course, for the academic pomposities written in their names. But refrains such as this say a great deal about what's been happening in university classrooms these days. It says even more about what's been happening to our culture when the fourteen works of a highly talented composer for the New York musical theater—a temple of high art primarily to those who vote for Antoinette Perry awards—are treated with the same kind of exegetical reverence as the *Eroica*.

Now comes a new Sondheim biography to add to the growing list of tributes—Meryle Secrest's *Stephen Sondheim: A Life* (Knopf). The author of books on Frank Lloyd Wright and Leonard Bernstein, Secrest is well-prepared for her task and has researched her subject with care. Her work adds some interesting facts about Sondheim's development, as a human being and as a composer-lyricist. It is also useful in the way it describes the Herculean task of putting together a collective piece of musical theater. Much of this territory has already been explored in Craig Zadan's *Sondheim & Co.* (1989), a collection of juicy anecdotes and gossipy testimonials by Sondheim's various collaborators. But Secrest is particularly provocative in the hints that she strews about the tensions between Sondheim's ambitions and his achievements.

The son of a dress manufacturer and a dress designer, Sondheim began life as a typical Central Park West kid from a prosperous Jewish family, who, when his parents split, moved to the East Side to divide his time between the Hotel Pierre (his mother) and 1010 Fifth Avenue (his father). He spent five summers in camp. He was sent to Fieldston and thence to military school. He soon became painfully aware that his mother, Foxy, was trying to seduce him. ("She would sit across from me with her legs aspread. She would lower her blouse and that sort of stuff.") In one of her occasional descents into psychobabble, Secrest suggests that this experience may have been responsible for his life-long suspicion of female sexuality. At any rate, he loathed his mother, whom a friend called "the most pretentious, self-centered, narcissistic woman I have ever known in my life," and didn't even show up at her funeral. He matriculated at Williams, where his energies went into writing musicals. He was one of those smart, precocious college kids who, had he graduated today, might be writing scripts for *The Simpsons* or *South Park*.

Sondheim's musical career was deeply influenced by Oscar Hammerstein, who was also his surrogate father. And while some see Sondheim's experimentation as a revolt against traditional Rodgers and Hammerstein musicals, it is also possible to regard it as an extension of that approach—different in style and tone, pessimistic where they are optimistic, but similar in its deployment (and debasement) of relatively weighty literary sources. When Sondheim met his future collaborator Hal Prince in Walgreen's in 1949, they instantly knew they would be "part of the future of musical theatre." But Sondheim soon found himself disabused of his "idealistic notion" that he was going into a serious enterprise: "I was going into show

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business and I was a fool to think otherwise."

Sondheim was hardly a classically trained musician, and, though he studied with Milton Babbitt, he wasn't much interested in becoming a serious composer. But he appreciated classical music, particularly Ravel, Tchaikovsky, Rachmaninov, Stravinsky, and Prokofiev, and it was his innovative idea to import some of their techniques into musical comedy. His first big break came when he met Arthur Laurents, then writing the book for *West Side Story*. Laurents introduced him to Leonard Bernstein, who was slated to write the music and lyrics. Neither Laurents nor Bernstein much admired Sondheim's compositional gifts (many people don't), but they recognized that he was a lyric writer of real consequence. As a matter of fact, Sondheim's lyrics—along with some of Bernstein's songs and Jerome Robbins's choreography—are the elements that now save what today seems a dated and impoverished book.

Sondheim himself recognized that *West Side Story* wasn't much good (though when Harold Clurman wrote that this crude modernization of *Romeo and Juliet* was pandering to the masses, Sondheim, who often bristled at criticism, cancelled his subscription to *The Nation*). Unlike many in the theater, Sondheim always preferred the "art" of musical composition to the "craft" of writing lyrics. Still, when he failed to persuade Ethel Merman to let him compose the score for *Gypsy*, he agreed to write words to Jules Styne's songs. His *Gypsy* lyrics reinforced his growing reputation as the most urbane and sophisticated wit in the American theater—the true heir of Cole Porter and Ira Gershwin. (With songs such as "I'm Still Here" he began to earn a name as "a poet of the theater.")

Sondheim took one more assignment purely as a lyricist, collaborating with Richard Rodgers on the catastrophic *Do I Hear a Waltz?* Rodgers didn't like Sondheim, calling him "a cold man with a deep sense of cynicism," probably because Sondheim once opined that Oscar Hammerstein was a man of limited talent and infinite soul, while Rodgers was the opposite. Whatever the case, Sondheim was henceforth to assume responsibility for the music and the words in all his successive work. His first major hit in that capacity was the Burt Shevelove-Larry Gelbart compendium of Plautine farces, *A Funny Thing Happened on the Way to the Forum*, though the songs for this lowbrow comedy, written in a witty salon style, could have easily been detached. Following the success of *Forum*, he had a surprising number of box office failures, largely because of mixed reactions from the *Times*. (Clive Barnes and Walter Kerr were often among his most scathing critics.) These flops included *Anyone Can Whistle*, *Follies*, *Pacific Overtures*, and *Merrily We Roll Along* (most of which won a number of Tonys anyway and were later rehabilitated in subsequent productions).

These momentary disappointments, however, were alleviated by such critical and box office successes as *Company*, *A Little Night Music*, and, preeminently, *Sweeney Todd*. *Sweeney Todd* was a work of high musical ambition, which began to approach the condition of opera. *A Little Night Music*, based on Ingmar Bergman's *Smiles of a Summer Night*, by contrast, was relatively lighthearted, and even featured a tune you could hum, namely "Send in the Clowns."

Sondheim reportedly wrote this song for Glynis Johns because it allowed her lots of pauses for breath—but he never greatly liked it. For him, it sounded too much "like a piano-bar song" (the very reason it appealed to Frank Sinatra—Sinatra moaned that Sondheim "could make me a lot happier if he'd write more songs for salon singers like me"). Yet "Send in the Clowns" hit the charts in recordings by Sinatra and Streisand, among others, and still remains Sondheim's best-loved song.

Most of these musicals, both the hits and the flops, were directed by Hal Prince in quasi-Brechtian style and designed by that great scenic artist Boris Aronson. They also used a variety of inferior book writers, including Arthur Laurents, Hugh Wheeler, John Weidman, and George Furth. For some reason, Sondheim never wrote his own librettos, though he had considerable literary abilities, and the book was usually the weakest aspect of the collaboration. In the 1990s, however, two things changed the direction of his career: his collaboration with James Lapine and then, if Secrest is to be believed, his first sustained love affair, with a young composer named Peter Jones.

With Lapine, Sondheim began to experiment with much more ambitious material. Whatever their intrinsic value, these works were efforts to create a new musical form. *Sunday in the Park with George* had a brilliant first act, tracing the evolution of Seurat's masterpiece *La Grand Jatte* through anecdotes about its principal subjects, then fell off precipitously into self-conscious maunderings about chromolumes and the nature of art. Their next collaboration, *Into the Woods*, also had second-act trouble, though even the first act struck some people (me included) like a view of the Grimm brothers through the eyes of New York analysands. Anyhow, it deteriorated from a Broadway fairy tale into melodramatic posturing ("all of a sudden everybody was getting killed," as its producer Rocco Landesman remarked). With their third piece, *Assassins*, a musical account of American presidents getting picked off through the decades, Sondheim and Lapine seemed to be demonstrating that some subjects were too outré even for Broadway musicals.

Sondheim's and Lapine's most recent contribution, *Passion*, was based on a nineteenth-century Italian novel, *Fosca* by Tarchetti, about a mismatched love between a young military officer and an ugly invalid who adores him with an unrestrained passion he is forced to return. Here, too, the composer had exceeded the possibilities of musical comedy, but in this case he seemed to have abandoned the form altogether. With *Passion*, Sondheim broke out of the commercial conventions of his time to create a tremulous musical experience in the style of Puccini.

Secrest speculates that the source of this new emotional element was his love for Peter Jones, with whom he exchanged wedding rings. Whatever the case, *Passion* baffled audiences and critics alike, some of whom laughed in disbelief. Admittedly, the piece was barely recognizable as Sondheim. It was neither smart nor brittle nor arch; it was, rather, pulsing with uncontrollable feeling, which meant that it was aimed at the wrong audience. The Sondheim crowd was expecting a sophisticated musical, and what it got was a passionate opera. As Sondheim later said, with considerable accuracy, nobody would have laughed had *Passion* been performed at the Met.

Secrest notes that, like Copland, Gershwin, and Bernstein, Sondheim never fitted comfortably into pop or classical categories. And there is no question that, as Harold Clurman once said of Clifford Odets, he liked to run with the hares and hunt with the hounds. In *Company*, for example, he wanted his audience "to laugh uproariously and then go home and not be able to sleep." When they failed to respond the way he expected, he groaned that he was a serious artist in a compromised world. Yet this world of compromise was the one he chose for himself, whose rewards he cherished. As Milton Babbitt once remarked about his pupil, Sondheim "was simply going to make it." Having grown up with celebrities, it was their company that he wished to join.

Some critics have praised Sondheim for blurring the boundaries between entertainment and art. Others suggest that this was something I have elsewhere called "middle seriousness," neither fish nor fowl (nor hare nor hound) but a mixture of both. Rodgers and Hammerstein were initially responsible for this

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zoological hybrid, having transformed the robust energies of early musical comedy—borrowed from low vaudeville routines and baggy-pants burlesque—into upper-middlebrow operettas featuring great music but debased or second-rate books. With *A Funny Thing Happened On the Way to the Forum*, and to a lesser degree Burt Shevelove's adaptation of Aristophanes's *The Frogs* (which he wrote for my own theater), Sondheim opened himself up to the original energies of the genre. Although he always claimed that "melodrama and farce are my favorite forms of theater," most of his other book musicals were inhibited by the limitations of the operetta form. (The same inhibitions confined Kurt Weill after he fled Nazi Germany and separated from Brecht, and began to make his livelihood composing Broadway musicals with writers such as Maxwell Anderson.) With *Sweeney Todd* and, especially, *Passion*, Sondheim at last began to work within forms that suited his experimental ambitions.

For a pop composer, Sondheim has enjoyed a remarkably inflated reputation. Bernard Jacobs of the Shubert Organization called him "one of the great poets in the history of the English language." The music critic Alan Rich wrote that "Sondheim has raised this art to a new plateau of greatness." Frank Rich called him "the last major artist in American theater who believes in Broadway." And in London, where his reputation is if anything even more exalted than in his own country (he taught a term as Visiting Professor of Contemporary Theatre at Oxford), the *Sunday Times* dubbed him "that rare thing in the musical theatre world: an intellectual heavyweight." These, like the numerous academic studies about him in the Dewey Decimal System, testify more to a great artistic potential than to a great artistic achievement. No one would think of comparing Gershwin's musical *Girl Crazy* with his opera *Porgy and Bess*, nor would we choose to remember Bernstein for *West Side Story* rather than for *The Age of Anxiety*. Liberated from the constraints of a commercial musical form, Stephen Sondheim may at last be positioning himself to explore the manifold possibilities of his prodigious talent. •

A practical and philosophical proposal for sexual harassment law.

In Defense of Gender-Blindness

By Jeffrey Rosen

I.

In February, Yale Law School sponsored a conference to celebrate the twentieth anniversary of the publication of Catharine MacKinnon's *Sexual Harassment of Working Women*. The Paula Jones trial seemed still likely to proceed on schedule, and there was a tincture of defensiveness in the air as conference participants dismissed the growing chorus of criticism that harassment law was losing its moorings. Andrea Dworkin thoughtfully ridiculed the critics of sexual harassment law as "millions of men [who] want to have a young woman in the workplace to suck their cock." Jane Larson knowingly declared that "more than one person may have come to orgasm in that White House closet," and insisted that "sex harassment law benefits women who seek sex at work and those who resist." And Frederick Schauer, the Frank Stanton Professor of the First Amendment at Harvard's Kennedy School of Government, dismissed as "frivolous" concerns that current harassment law might inhibit free speech. All this certitude was a sure sign that all was not well with the cause.

There were useful presentations at the conference, notably on the manner in which sexual harassment law operates in the cases that actually go to trial. Cass R. Sunstein noted that in the nearly 70 reported cases, there was no correlation between the factors that ought to justify higher or lower jury awards—such as coerced sex, bodily contact, or harassment of other employees—and the damages actually awarded. What was missing from the proceedings, however, was a critical examination of the first principles of sexual harassment law. There was remarkably little discussion, for example, about the extent to which the liability rules of modern harassment law have transformed corporate workplaces and universities, creating strong incentives for prudent employers to restrict far more speech and behavior than the law actually forbids. And more abstractly, there is the urgent and indelicate question of the relationship of sexual harassment law to liberalism. For sexual harassment law makes certain assumptions about legal personhood, and about the objectivity of law, that seem profoundly inconsistent with the liberal ideal.

In Harm's Way: The Pornography Civil Rights Hearings
edited by Catharine A. MacKinnon and Andrea Dworkin
(Harvard, 496 pp., $24.95)

Heterophobia: Sexual Harassment and the Future of Feminism
by Daphne Patai
(Rowman & Littlefield, 288 pp., $22.95)

The truth is that, practically and philosophically, something has gone terribly wrong. As the Supreme Court prepares to decide three important cases that could redefine the liability rules in sexual harassment cases, it is worth asking whether or not the costs of the existing liability regime outweigh the benefits. More ambitiously, the time has come to resurrect a vision of gender-blindness that the current harassment regime has spurned. In contemporary American life, gender-blindness may seem even more impracticable than color-blindness; but in the face of empirical evidence suggesting that men and women, in the aggregate, perceive the same situations in intractably different ways, the need for a legal standard that refuses to honor these differences, and promote them into the last word on the subject, is increasingly urgent in a democracy founded on notions of legal neutrality and equal citizenship.

II.

Most people are surprised to learn that sexual harassment law does not impose liability on sexual harassers. Instead it puts the full weight of responsibility on their employers. And owing to the incentives created by this liability regime, prudent companies have

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little choice but to restrict a great deal of sexual expression that no jury would ultimately condemn. The law has transformed inquisitions into the emotional lives of employees into an ordinary matter of corporate self-interest.

In 1986, the Supreme Court held that employers can reduce the danger of being held liable for sexual harassment by establishing procedures "calculated to encourage victims of harassment to come forward." Since then, almost 75 percent of companies with more than one hundred employees have adopted anti-sexual harassment policies. Most of those policies look very much like the "Sample Antiharassment Policy" reproduced in Barbara Lindemann and David Kadue's *Sexual Harassment in Employment Law*, which first appeared in 1992. The model policy begins by quoting the EEOC's definition of sexual harassment: "Unwelcome sexual advances, requests for sexual favors, and other physical, verbal, or visual conduct based on sex constitute sexual harassment when (1) submission to the conduct is an explicit or implicit term or condition of employment, (2) submission to or rejection of the conduct is used as the basis for an employment decision, or (3) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment." And the model policy goes on to say that "sexual harassment may include explicit sexual propositions, sexual innuendo, suggestive comments, sexually oriented 'kidding' or 'teasing,' 'practical jokes,' jokes about gender-specific traits, foul or obscene language or gestures, display of foul or obscene printed or visual material, and physical contact such as patting, pinching, or brushing against another's body."

By itself, of course, a suggestive comment or a practical joke from a boorish supervisor or coworker wouldn't be sufficiently "severe or pervasive" to be illegal under the Supreme Court's definition of harassment. But a hostile environment can be created by nothing more egregious than a pattern of comments or jokes from different employees; and so, to protect themselves from the risk of ruinous liability, companies face increasing pressure to launch formal investigations in response to relatively trivial offenses. "If you are in management, now is the time to refine your sexual harassment policy so that it is in the spirit of your organization's values rather than written to the letter of the law," writes Rita Risser in a report in 1996 by Fair Measures Management Law Consulting Group. "Your policy should go beyond [what the law forbids]. If you set your standards too low, one mistake by one supervisor could make you the next landmark case. Also, the EEOC accepts claims for conduct that clearly is not illegal. Since it's costly to respond to such claims, it's in an organization's best interest to minimize them."

The Sample Antiharassment Policy goes on to provide a grievance mechanism for employees to report harassment complaints. "All ABC employees are responsible to help assure that we avoid harassment. If you feel that you have experienced or witnessed harassment, you are to notify immediately Mr. ——— or Ms. ——— in the Department of Human Resources.... The Company's policy is to investigate all such complaints thoroughly and promptly. To the fullest extent practicable, the Company will keep complaints and the terms of their resolution confidential."

The fact that harassment policies allow complaints by offended third parties who think that they have witnessed harassment, regardless of the feelings of the purported victim, exemplifies the stereotypes that the law now embodies. Imagine, for example, the case of a male supervisor who engages in well-intentioned but suggestive teasing with a female employee. She isn't offended, and she doesn't believe that his remarks interfere with her ability to do her job. Under most company harassment policies, if a coworker overheard the conversation and felt offended, she would have a duty to notify the Department of Human Resources and might have a cause of action on her own.

The company would then be compelled to launch a full-blown investigation, interviewing the alleged harasser and the putative victim, and all the other employees who had come into contact with either of them, about intimate details of their relationships. Even if the woman who was the object of the contested remarks continued to insist that she did not feel victimized, the model policy wouldn't permit the company to drop the matter without allowing the brutal investigative mechanisms to grind to their conclusion.

As the quasi-legal procedures took their toll, the alleged harasser and the alleged victim might feel more ill-treated by the invasive investigation than by anything that had been said—the harasser, because he suddenly found himself forced to defend his career over remarks that no one had ever told him were offensive, and the victim, because she did not appreciate being cast as a victim against her will.

Beset by pressures from all sides, the purported victim and the purported harasser might justifiably feel that they were being used as symbols to ventilate the grievances and the frustrations of their colleagues. Yet none of this would matter. Despite the obvious costs of harassment policy—the disruption of workplace relationships, the harm to reputations, and the invasions of privacy—even a liberal employer would not have the option of resolving the dispute quietly, by taking the supervisor aside and telling him to watch his language.

The scenario that I've described is a machine without mercy. It does not empower individual men and women; it demeans them, and robs them of their autonomy. And it is the ineluctable consequence of the liability rules currently under examination by the Supreme Court.

Companies are generally held "strictly liable" for cases of "quid pro quo" harassment, in which supervisors fire or demote or punish employees who refuse to have sex with them. Strict liability means that the company management is held responsible even if it did not know that the harassment was occurring, and even if it has adopted a well-publicized policy designed to prevent harassment. When supervisors flamboyantly abuse the authority that the company has delegated to them, the argument goes, their acts should be imputed to the company as a whole.

In cases involving "hostile environment" harassment, courts tend to impose a lower liability standard. The general rule is that companies should be held responsible only when they are negligent—that is, when they actually knew about the harassment and failed to do anything to stop it, or when they should have known about it but failed to adopt policies designed to prevent it. The effect of the negligence standard has been to encourage companies to adopt anti-sexual harassment policies to shield themselves from liability. But lower courts aren't sure whether or not the adoption of a policy automatically gets a company off the hook, and so they are increasingly inclined to ask whether the policy was effective in deciding the company's ultimate liability. This only increases the pressure on companies to root out as much sexual expression as possible.

So the defenders of harassment law must be wrong when they deny that harassment law has provided incentives for companies to regulate speech and behavior to a degree that would have been unimaginable when MacKinnon published her pathbreaking book two

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decades ago. The question is not whether the current harassment regime has led to excesses; it is whether we should accept those excesses as a transitional phase in the transformation of workplace norms that has followed the integration of women into the workplace.

In a provocative presentation at the Yale conference, Robert Post suggested that the corporate workplace is a "managerial" sphere in which social relations are organized around principles of efficiency. For this reason, he argued, citizens should be willing to accept greater restrictions on their autonomy and their expression in the workplace than they would tolerate in the public sphere, which is ideally a space of self-governance.

But surely this Taylorite vision of the modern workplace, rooted in principles of industrial democracy in the 1920s, is hard to accept today. As e-mail, modems, and PCs break down the boundaries between work and home, there are increasingly few private or public spaces for citizens to express themselves autonomously. Moreover, the range of workplaces regulated by modern harassment law—which includes not only widget factories but newspapers, theaters, and lifeguards on beaches—is too diverse to be captured by the managerial model. Without the freedom to test controversial ideas with colleagues, journalists (to take an example) cannot properly do their job; and actors (to take another example) are not exactly devoted to efficiency above all.

As harassment law has developed, it seems ill-equipped to make the fine distinctions among workplaces that Post imagines. Surely public universities and high schools should be regulated by less restrictive behavior codes than corporate businesses. The purpose of a university is to promote freedom of thought, not to increase productivity; and holding schools to the same standards as corporations arguably poses a direct threat to the experience of teaching and learning. The Supreme Court is now debating whether liability rules should be different for universities and corporate workplaces, but political pressures to adopt harassment codes are already extending the restrictions that originated in corporations into the academic sphere.

In her powerful new book, Daphne Patai argues that anti-harassment policies, in universities at least, have produced "not greater justice, not an absence of discrimination against women, but a climate that is inhospitable to all human beings." Patai includes a close reading of the leading harassment manual for colleges and universities, *Sexual Harassment on Campus: A Guide for Administrators, Faculty, and Students*, edited by Bernice R. Sandler and Robert J. Shoop. Its first chapter, entitled "What Is Sexual Harassment," enumerates a list of indignities, extending from "sexual innuendos, comments, or bantering," through "humor or jokes about sex or females in general"; it also includes "touching a person," "giving a neck or shoulder massage," "leering or ogling, such as 'elevator eyes,'" "calling women 'hot stuff,' 'cutie pie,' etc.," "sexual graffiti," and "laughing at or not taking seriously someone who experiences sexual harassment."

Sandler and Shoop also include a chapter on "student to student harassment," which they think is on the rise. The attempt to stamp out peer harassment, in public schools as well as public universities, is a useful window on the excesses of the current liability regime in harassment law. Children, after all, are not adults, and they can't be expected to conform their behavior to adult norms. Teasing, poking, grabbing, and clumsy horseplay are a natural part of growing up; and if publicly funded schools were held liable for failing to root out all sexual experimentation between students, they would be vulnerable for damage awards far greater than the federal grants that created the liability in the first place. They would also

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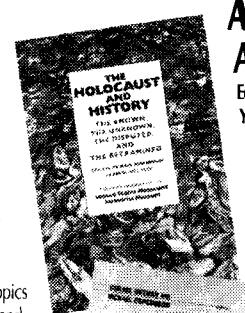

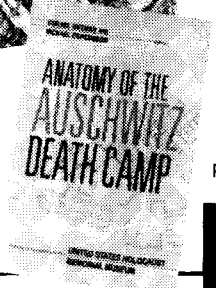

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transform themselves into cruelly stunting environments.

The question of how responsible schools should be for peer harassment is an open legal question; but a few months ago Judge Richard A. Posner suggested in an appellate opinion that even a negligence standard would be too demanding. In an age in which parents are suing teachers for attempting to clip their children's fingernails, forcing schools to take Draconian measures to banish all horseplay from the classroom would be as likely to expose a school to suits as the failure to protect the potential victims in its care. For this reason, Posner proposed that schools should not be liable for peer harassment unless they were deliberately or recklessly indifferent to it: unless, in other words, they actually knew about hostile or offensive conduct likely to interfere with a student's education, and made no efforts to stop it.

It is easy to imagine the hazards of holding schools liable for sex discrimination when their students grab each other; but the question of a school's liability when teachers harass students, which is now before the Supreme Court, raises similarly troubling questions. The facts of the Supreme Court case are stark. A Texas social studies teacher named Frank Waldrop seduced one of his ninth-grade students, a girl named Alida Gebser, and had sex with her for a year. As soon as he was discovered, he was fired; later, he was jailed for sexual assault.

The school district doesn't dispute that the conduct was criminal; it says that since the girl never told anyone about her ordeal, including her parents, school officials should not be liable for conduct that they couldn't have been expected to discover. Gebser's parents counter that the school should have known that one of its teachers was abusing his student; and since the school failed to promulgate a well-publicized anti-sexual harassment policy, it should have to pay a lot of money.

The Gebser case suggests that well-publicized harassment policies are unlikely to deter the most egregious sexual abusers. Alida Gebser did not complain because she was confused and traumatized by her ordeal; but the procedures were not wanting. Later she testified that she was afraid that she would lose Waldrop as a teacher if she told anyone about their relationship.

All this calls into question the argument, made by the Clinton administration and women's advocacy groups, that sexual harassment in schools is "eminently foreseeable." The kind of monitoring that would be necessary to root out secret relationships such as the one in the Gebser case would disrupt far more than secret sexual relationships between teachers and students. To avoid liability, schools that accept public funds would have a powerful legal incentive to adopt speech codes to regulate the behavior of their students and teachers, even though the Supreme Court held in 1992 that speech codes adopted by legislatures are presumptively unconstitutional. In trying to navigate the legal shoals, schools would suffer a serious threat to academic freedom, suppressing a great deal of innocent speech for the dubious purpose of holding schools liable for conduct that is already illegal under federal and state law.

The Supreme Court might decide to treat schools and universities differently than other workplaces, on the grounds that free expression is central to the idea of a university, and the costs of monitoring the behavior of teachers and students would chill the learning process. Yet the workplace at issue in the second Supreme Court case involves lifeguards on Boca Raton Beach, and this mise-en-scène is similarly hard to construe as a "managerial" sphere.

Beth Ann Faragher says that she was subject to a series of tribulations during the five years that she worked as a lifeguard in Boca Raton to put herself through college. Her supervisors, she says, invited her to the unisex shower with them, used vulgar language in her presence, complimented her body, and grabbed her on occasion; and one of them tried to kiss her after she agreed to go on a date. Yet Faragher never told the offending parties that she found the conduct offensive during her five years on the job. Nor did she complain to anyone in the city management, though she did tell another supervisor, who thought she was consulting him as a friend and failed to report it to anyone else.

At what level must a woman complain before a public employer will be held liable for harassment? Like Alida Gebser's parents, Beth Faragher says that the city of Boca Raton should be held liable, because it had an anti-sexual harassment policy but failed to publicize it properly. It is hard to believe, however, that a better-publicized policy would have encouraged Faragher to file a complaint, since she refused to do so even when urged by a female coworker, who was filing a complaint of her own.

In its Supreme Court brief, the Clinton administration argues that employees should not be expected to complain in hostile environment cases because they may fear retaliation from their supervisors, even if there is no explicit threat. "When the employer's practices and the supervisor's conduct reasonably have led an employee to fear that adverse employment consequences will result if she resists or complains," writes the Solicitor General, the employer should be liable, whether or not it has adopted a harassment policy. Yet the "hostile environment" doctrine is an amorphous one, according to which a man's joke can be a woman's lawsuit, and so it seems dangerous to create a strict liability standard that allows women to sue for boorish behavior that they never indicated was unwelcome.

The administration is taking a similarly paternalistic position in the third Supreme Court case, *Burlington Industries* v. *Ellerth.* This case has been compared to the one brought by Paula Jones. Kimberly Ellerth says that her boss made sexually suggestive comments, told dirty jokes, commented on her breasts and legs, and once, while leaving a hotel bar after a business trip, said, "You know, Kim, I could make your life very hard or very easy at Burlington." Ellerth understood this as a quid pro quo threat.

But she ignored it, and she was promoted anyway. Two months later, without mentioning anything about harassment, Ellerth resigned, after other bosses told her that customers and colleagues had complained about her work. Three weeks later, she accused her supervisor of harassment for the first time. Ellerth says that she never filed a formal complaint or invoked the company's harassment policies because she was afraid of losing her job. Arguing, as lawyers say, in the alternative, she also says that she quit because the harassment became "unbearable." But if she knew that she was going to quit, why didn't she complain?

The technical question in the Ellerth case is what the liability standard should be for harassment cases that involve unexecuted threats but no tangible job injuries. In ordinary quid pro quo cases, again, the company is liable whether or not it knew about the harassment, on the theory that firing is an official act that companies should be expected to monitor carefully. But, as Posner argued in his appellate opinion in the Ellerth case, it is infeasible to expect employers to stamp out all consensual affairs in the workplace between supervisors and employees:

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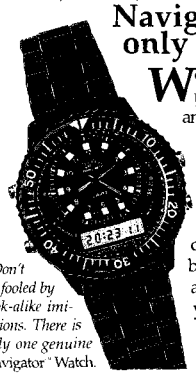

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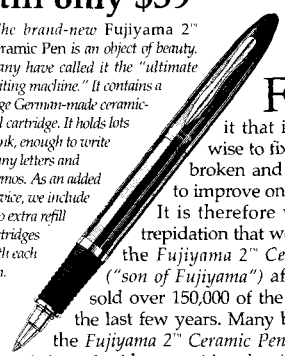

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words, the gestures, the other behaviors that differentiate the fully consensual relationship from the coercive relationship will often be invisible to the supervisor's supervisor. The yielding to a threat will look no different from the yielding to a lawful proposal. It is only when the threat is carried out that the abusive supervisor does something, such as firing the supervised employee, that the employer will know about and should monitor. It is facile to suggest that employers are quite capable of monitoring a supervisor's actions affecting the work environment. Large companies have thousands of supervisory employees. Are they all to be put under video surveillance? Subjected to periodic lie detector tests? Trailed on business trips by company spies?

For these reasons, Posner proposes that companies should be strictly liable for their supervisor's threats only when the threats are actually carried out; and all other advances should be governed by a negligence standard, which means that the companies may (or may not) be able to avoid liability by adopting a harassment policy.

Behind the legalisms about liability, the three Supreme Court cases raise a single question, and it pertains as much to social policy as to law: Should a woman have to make clear that a man's behavior is offensive before the man is punished? Some of the most interesting empirical data at the Yale conference were presented by Louise Fitzgerald, a social psychologist at the University of Illinois, who suggested that men and women often perceive the same social interactions very differently. "Men are more likely to perceive sexual motives and intentions," Fitzgerald said, pointing to one of her interview subjects who insisted that he was being propositioned at a lunch counter by a woman who had accidentally stepped on his foot.

From this gap in perception, Fitzgerald concludes that it is unrealistic to expect women to complain about behavior that they find offensive. "Psychological literature says that the real victims do nothing," she said. "One in five women directly tell men to stop; only five percent complain to their employer." According to Fitzgerald, this doesn't mean that women are passive in the face of sexual insult. Her subjects show a range of behavior: avoiding or appeasing the offending man, or remaining silent and refusing to give him the satisfaction of a response. Since "coping with abuse is a psychological process," Fitzgerald concluded, the law is wrong to insist that the only valid complaint is a formal complaint.

Fitzgerald proposed instead that certain acts should be considered "harassing per se," such as calling women by names traditionally reserved for body parts, whether or not a woman complains. In such cases, the burden should shift onto the man to prove that the words were welcome. But this conclusion seems exactly backward. Fitzgerald is correct that "men in general see sex where it isn't there and insist that it is there," but in light of this gap in perception, shouldn't the liability rules be set up to encourage women to make their own very different perspective clear, by objecting to behavior that they find objectionable? Otherwise, boorish men in the workplace may be unable to change their behavior until it is too late, because no one ever told them that their behavior was unacceptable. (The best data suggest that the most effective way to stop harassment is to ask the harasser to stop.) Or to put it differently, an essentialist view of gender differences—for that is what Fitzgerald is peddling, even if the essentialism comes in social-scientific camouflage—makes it even more imperative that we think hard about the roots of the sexual harassment law that is now loose in the land.

III.

It may seem surprising that the Supreme Court has not yet made clear whether or not women have to complain about offensive speech for liability to be imposed. But really the confusion is not surprising, for it reflects a deeper confusion at the heart of the legal and philosophical definition of sexual harassment itself. Since the Supreme Court has continued to skirt the question of why, precisely, harassment is a form of discrimination, the law has evolved in ways that only gender essentialists can find convincing.

At the beginning of the Supreme Court argument in the Texas schoolgirl case, Chief Justice Rehnquist asked a simple question. "Was there some showing of discrimination?" he asked, referring to allegations that the ninth-grade teacher had an affair with his student. "We're assuming harassment and discrimination are synonymous," the girl's lawyer revealingly replied. But Rehnquist was not convinced. "I think the statute says you have to *discriminate* on the basis of sex; you have to treat students differently." "Here, this student was singled out," the lawyer repeated. "Because of sex?" Rehnquist asked again.

The exchange went to the heart of the analytical weakness of harassment law. It seems odd to think of a teacher's seduction of a ninth-grader as a form of sex discrimination. Statutory rape, certainly. But discrimination on the basis of gender? Not in the way that we ordinarily understand the term. To be sure, Rehnquist's ingenuousness was a little disingenuous. It was Rehnquist who, in 1986, wrote the opinion for the Court in the *Meritor* case, declaring unequivocally that a bank supervisor who coerced one of his employees into repeatedly having sex was practicing a form of sex discrimination. "Without question, when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor 'discriminate[s]' on the basis of sex," he wrote.

So how, precisely, did the Court come to view erotic fixation as form of gender discrimination? Discrimination usually implies some form of contempt for a class of people being singled out for disadvantageous treatment as a consequence of their shared characteristics. Unwanted advances, by contrast, often involve a man's attraction to a particular woman because of her unique characteristics. Early judicial rulings in the 1970s refused to recognize sexual advances as a form of gender discrimination, on the grounds that they were motivated by personal proclivities rather than by gender animus. Desire may be rampant, but it is not general. A man does not hit on a gender.

Unless, of course, you believe that a woman is a gender; and that there is no significant distinction between a class and a member of a class, and every member of a class stands for the class, and is essentially and definitionally fixed in her identity by her membership in the class. Enter Catharine MacKinnon. It was she who provided the theoretical arguments for considering unwanted advances a form of discrimination. In *Sexual Harassment of Working Women*, MacKinnon compared two mutually inconsistent, competing theories of liability. The first, which she called the difference approach, asks the following question: "How can you tell that this happened because one is a woman, rather than to a person who just happens to be a woman?" According to MacKinnon, "The basic answer, which presupposes sex comparability, is: a man in her position would not be or was not so treated."

The difference approach is unsatisfying for several reasons. First, it requires courts to engage in an oddly subjunctive thought experiment, a kind of transvestite counterfactual: How would the complainant have been treated if his or her sex were changed? But sexual attraction, again, is particularized, even unique. It is hard to imagine how a judge is supposed to guess whether someone would have been treated differently if she were a different person. And in workplaces where there are few men or few women, the thought experiment is

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even more arcane: earlier this year, in the *Oncale* case involving same-sex harassment, the justices were asked to imagine whether Oncale would have been treated differently if he were a woman, even though there were no women on the oil rig where the roustabout worked.

Indeed, the difference approach presents a particular difficulty for those who hold a MacKinnonite analysis of gender. It requires courts to imagine how women would have been treated if they were men, when MacKinnon believes that the genders really cannot be compared in meaningful ways, because women are socially subordinate to men. "To take the differences approach requires temporary suspension of the fact that the sexes are substantively unequal, not just different, a fact which calls into question the appropriateness of presuming equality in order to measure disparity," MacKinnon observes. Although it might be reasonable to compare the sexual harassment of men and women in a world in which the sexes were equal, "in this society, it is not, because of that social inequality which discrimination law exists to eliminate."

MacKinnon explored the difference approach as a litigation strategy, but she preferred an alternative, mutually inconsistent, and far more radical approach to the question of how sexual advances could be considered sex discrimination. She called it the "inequality approach." In her words, "practices which express and reinforce the social inequality of women to men are clear cases of sex-based discrimination in the *inequality* approach."

This inequality is not merely social or political. It is a much deeper and more indelible disadvantage. Sexuality itself, MacKinnon has famously argued, is the lynchpin of gender inequality. "The male sexual role . . . centers on aggressive intrusion on those with less power"—namely, women. "A feminist theory of sexuality," therefore, "locates sexuality within a theory of gender inequality, meaning the social hierarchy of men over women." Anatomy is destiny; or rather, law.

In her less guarded rhetoric, MacKinnon seems to suggest that even apparently consensual heterosexual sex may reinforce the social inequality of women to men, and thus constitute sex discrimination, at least when it takes place between men and women whose social status is not precisely equal. "Is ordinary sexuality, under conditions of gender inequality, to be presumed healthy?" MacKinnon asks in a crucial passage:

> What if inequality is built into the social conceptions of male and female sexuality, of masculinity and femininity, of sexiness and heterosexual attractiveness? Incidents of sexual harassment suggest that male sexual desire itself may be aroused by female vulnerability.... Examination of sexual harassment, precisely because the episodes appear commonplace, forces one to confront the fact that sexual intercourse normally occurs between economic (as well as physical) unequals. In this context, the apparent legal requirement that violations of women's sexuality appear out of the ordinary before they will be punished helps prevent some from defining the ordinary conditions of their own consent.

MacKinnon's inequality approach, in other words, narrows the definition of consensual sex in a way that dramatically restricts the sphere in which consensual sexual relations can occur. "[I]t cannot be assumed that if the woman cares about the man, the sex is not coerced," she writes. When pressed to explain whether or not she believes that women can freely consent to sex with more powerful men, MacKinnon's writing becomes even more opaque than usual. "The courts are clear, if others are not, that working women cannot sue for having mutual sexual interactions," she wrote in an elusive piece a few months ago in *The New York Times*. "Courts also recognize that sexual coercion can be situational: power differences can be a form of force. Sex under conditions of extreme inequality can be coerced and exploitative; sexual compliance can be coerced. But sex cannot be harassment at work by law unless the woman or man really didn't want to have it."

Although MacKinnon held out the possibility, in that article, that sex, under some circumstances, might be consensual, she has argued elsewhere that in a world defined by gender inequality—which is to say, by gender—neither the law nor the accused man nor the woman herself can know a woman's will, because the law defines consent from the man's perspective. Thus, MacKinnon has emphasized "the appearance of rape as similar to normal heterosexual encounters" in a world defined by the male viewpoint. As she rather crisply taught, "Man fucks woman; subject verb object."

This is not only a terrible pessimism about erotic life. It is also legally and historically troublesome. In an essay called "Sex and Guilt," recently published in the *University of Virginia Law Review*, Anne Coughlin challenges MacKinnon's view that rape law, by requiring women to offer physical resistance to prove their lack of consent, promotes the sexual agency of men at the expense of that of women. MacKinnon's error, Coughlin argues, is to assume that American law ordinarily treats sexual intercourse as legal. In fact, the roots of rape law extend to the puritanical codes of the late seventeenth century, in which consensual sex outside marriage was presumptively illegal.

For most of American history, judges confronted with an allegation of sexual misconduct had to decide whether the encounter involved a rape, for which the man alone was to blame; or fornication or adultery, for which both the man and the woman shared criminal responsibility; or marital intercourse, for which neither participant would be punished. Rather than marking the boundary between sex and rape, Coughlin argues, the woman's lack of consent was what distinguished the man's crime (rape) from the couple's crime (fornication or adultery). Since women had an incentive to claim they had not consented to sex to avoid criminal liability for fornication or adultery, courts had every reason to put the woman on trial, to find out whether or not she was looking for an

The Baby

"Doesn't it break your heart,"
she said to her husband one morning,
"that he's going to die one day?"

(The future, until now a silent letter, was pronounced.)

The new parents resolved to make
the present a migration towards that
original silence, and vain
progress was made, as if they were rowing
a boat across a lake to a restaurant
they didn't know had closed down.

Rex Wilder

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excuse to avoid guilt.

MacKinnon, ironically, does not assume that nonmarital sex is presumptively legal. By suggesting that sex between unequals cannot ever be truly consensual—and that the inequality in sex is owed to an essential incommensurability of men and women—MacKinnon has helped to resurrect a world that very much resembles the seventeenth-century Puritanism from which modern rape law evolved.

MacKinnon's argument that "sex under conditions of extreme inequality can be coerced and exploitative" masquerades as a vision of radical egalitarianism; but its intellectual and legal consequence is to promote and to preserve a rigid social hierarchy. By pressuring companies to ban even consensual affairs between those on different rungs of the corporate ladder, for fear of liability, MacKinnon has dramatically restricted the possibility for romantic interactions between people of different social classes, and in the process she has reinforced the class distinctions themselves. She is a sexual determinist, and determinists are not the most reliable champions of progress.

MacKinnon thinks ahistorically, in terms of fixities. Specifically, she thinks ahistorically about America, and about its great democratizing (and disorienting) achievement of social mobility. The American workplace has traditionally been a laboratory of social mobility, as men and women from very different backgrounds meet each other and improve their station. From Bill Gates on down, executives often fall in love with employees and, through marriage, transform their social status. Is this love only another instrument of oppression?

Indeed, in an essay on Marxism and feminism, MacKinnon herself recognizes this dynamic. "From a feminist perspective, a woman's class position, whether or not she works for wages, is as much or more set through her relation first to her father, then to her husband," MacKinnon writes. "Through relations with men, women have considerable class mobility, down as well as up." And yet the perverse effect of the MacKinnonite rule—that only romances between social equals are permissible—is to entrench existing class divisions by preventing women and men lower down on the social scale from marrying those above them. The promise of America is embodied in the Whitmanian individualist, unconstrained by class limitations, and free to imagine the world anew and to act on his (or her) imaginings; but MacKinnon's vision is closer to the hierarchical corporatism of Babbitry, in which anxious middle managers are imprisoned by their class limitations, and afraid to accept dinner invitations from those above or below them.

If one were looking for modern societies that most closely approximate MacKinnon's neo-Puritanical vision of gender relations, the likeliest candidates would be the extreme Islamic theocracies, in which the private space for sexual relations beyond the reach of legal and religious regulation is exceedingly narrow. In such societies, marriages are arranged, and class mixing is rare because prospective wives are chosen (by male marriage guardians) from among the groom's social class. Women are secluded and protected from unwanted sexual attention by a strict dress code: the injunction for women to cover all but their hands and face is designed to prevent them from provoking sexual excitement in men.

The constitutions of several Islamic states proclaim that preserving female honor is a duty, and they require the state to prohibit offenses to public decency, including anything that might be objected to as immodest or sexually suggestive. Extramarital sexual relations must be negotiated with legalistic attention. As Geraldine Brooks has described, for example, Shiite Muslims execute a temporary marriage contract called *sigheh*, which allows unmarried couples to date or to have sex for a mutually agreed upon amount of time, free from the prying of revolutionary zealots. Outside of *sigheh*, unrelated men and women cannot be alone together, touch each other, or appear uncovered before each other. Women in general are seen not as distinctive individuals but as passive, fungible beings, who must preserve morality at all costs.

Islamic law, of course, secludes and protects women as a means of subordinating them to men, while MacKinnon seeks to seclude and to protect women as a means of liberating them from male subordination. For the Islamic clerics, the power of the patriarchy is prescriptive; for MacKinnon, it is descriptive. But both the Islamic and MacKinnonite visions of gender agree that the private sphere, in which men and women can encounter each other free from regulations, should be very small, and the public sphere, in which sexual relations are intricately regulated, should be very large; and that male domination and female submission are inherent in the very nature of gender identity. Inadvertently evoking the Islamic injunction to preserve female honor, MacKinnon sees sexual harassment laws, like restrictions on pornography, as a form of protection for female dignity.

IV.

In the recently published hearings on her bill to ban pornography in Minneapolis and Indianapolis as a form of sex discrimination, MacKinnon stresses that her arguments "that defined sexual harassment as a form of discrimination on the basis of sex" are based on "the same view of sex discrimination that underlines this ordinance." The root meaning of pornography, MacKinnon noted during the Indianapolis hearings, is "the graphic depiction of whores.... In pornography, women are graphically depicted as whores by nature, that is, defined by our status as sexual chattel." It is the depiction of women in subordinate positions, MacKinnon argues, that makes pornography and harassment forms of sex discrimination: "pornography as we define it makes the inequality of the sexes sexual, the way that it makes sexy, the way that it eroticizes putting women in an inferior position."

Courts and citizens have had no trouble understanding that MacKinnon's efforts to regulate pornography as a form of sex discrimination violate the core protections of the First Amendment. Her Minneapolis ordinance defined pornography as "the sexually explicit subordination of women, graphically depicted, whether in pictures or in words, that also includes one or more of the following: women are presented dehumanized as sexual objects, things or commodities ... women are presented in postures of sexual submission ... women are presented as whores by nature." "This is thought control," Judge Frank Easterbrook noted in his opinion in 1985 striking down the Indianapolis ordinance.

> Speech treating women in the approved way—in sexual encounters "premised on equality"—is lawful no matter how sexually explicit. Speech treating women in the disapproved way—as submissive in matters sexual or as enjoying humiliation—is unlawful no matter how significant the literary, artistic or political qualities of the work taken as a whole. The state may not ordain preferred viewpoints in this way.

What is surprising is that judges have been so much slower to grasp that MacKinnon's view of sexual harassment law offends the First Amendment for precisely the same reason that her vision of pornography does. The problem is not that the MacKinnonite vision of harassment and pornography permits the banning of speech merely because it is offensive. "Somebody can be real offended by something and if it isn't described by this statute, they can't do anything about it under this statute," MacKinnon noted during the Indianapolis hearings. "They

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can also not be offended by it, and they won't be the people to bring an action under this law probably.... In other words, it doesn't have anything to do with subjective feeling."

Instead, the MacKinnonite efforts to ban harassment and pornography are designed to protect the reputation of women in general, regardless of whether or not any particular woman is offended, and they achieve their purposes by forbidding the verbal denigration of women in some terms but not in others. In this sense, MacKinnon's vision of harassment and pornography very much resembles efforts to restrict group libel, which the Supreme Court now seems to recognize as an unconstitutional attempt to regulate speech at the center of the First Amendment's protections. So the MacKinnonite vision of harassment and pornography violates the central principles of free expression, at least in the context of public employers who are bound by the First Amendment. (Whether the First Amendment is violated when the government pressures private employers to adopt speech codes in order to avoid liability under Title VII is a more complicated question.)

But the MacKinnonite vision is troubling in a deeper sense, which has to do with MacKinnon's conception of legal personhood. She believes that men and women are defined by their sex rather than by their individual personalities and choices. Although she is too much of a post-foundationalist to talk in terms of essences, she is, for all intents and purposes, a gender essentialist. In her view, gender is constitutive of personhood, which is to say that all men are oppressors and all women are victims, regardless of whether or not they actually feel oppressive or victimized.

To abstract away from gender, and to construct a universalist theory of equality, MacKinnon believes, is a concession to the patriarchy. It is remarkable, in retrospect, that MacKinnon has largely succeeded in embedding her vision of gender essentialism into American law, for her vision represents a direct assault on the liberal vision of gender-blindness. And that vision is the foundation on which the Supreme Court's jurisprudence of gender discrimination was originally constructed. It was championed by Ruth Bader Ginsburg as an advocate in the 1970s, and as a Justice in the Virginia Military Institute case in 1996. "Generalizations about 'the way women are,' estimates of what is appropriate for most women, no longer justify denying opportunity to women whose talent and capacity place them outside the average description," Justice Ginsburg wrote, in a rebuke to Virginia's essentialist claim that men learn best in adversity and women in harmony.

Ginsburg has not yet acknowledged, in her sexual harassment opinions, the extent to which the MacKinnonite vision of gender equality is a direct repudiation of her own. And so, as the Court prepares to hand down three important harassment decisions, it is worth asking what a gender-blind understanding of harassment law would look like. In its recent opinions, the Supreme Court has intoned rather plaintively that harassment must be "because of sex" in order to be actionable. "The critical issue, Title VII's text indicates, is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed," Justice Ginsburg wrote in 1993. But the Court can't make the analytical problem go away merely by incarnating the magic words "because of sex." How, precisely, can the law be reformed to focus on sex discrimination, as opposed to sexual expression?

In a widely publicized proposal for reform, Vicki Schultz argued recently in the *Yale Law Journal* that sexual harassment law has erred in emphasizing sexual advances, rather than gender-based hostility, as the core of an actionable offense. By accepting the MacKinnonite notion that sexuality is the lynchpin of inequality, Schultz argues, courts have "neglected equally pernicious, nonsexual forms of gender-based misconduct in the workplace—particularly conduct that denigrates women's competence and thereby preserves work along gendered lines." Rather than defining harassment as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature," as the EEOC guidelines do, Schultz would prohibit "conduct the purpose or effect of which is to make it more difficult for someone to do their job based on sex."

There is much to admire in Schultz's effort to reorient harassment law away from its misguided focus on sexual expression; and Schultz has been cast as an advocate of narrowing the scope of harassment liability. Alas, this is a misrepresentation of her proposal. In fact, Schultz argues the opposite. "We have not conceptualized the problem in sufficiently broad terms," she writes. Schultz would expand the scope of admissible evidence in harassment cases, stressing that conduct that demeans the person as a professional and makes it more difficult for women to do the job may take the form of sexual advances or other conduct of a sexual nature, but need not do so. Nonsexual hazing, work sabotage, or failure to provide informational training would count toward establishing a hostile work environment for women. "In the context of a workplace with longstanding inequality," she writes, "a potentially 'stray remark' about women ... may assume heightened causal significance."

In Schultz's view, when a supervisor demeans the professional abilities of a subordinate, the company should be automatically liable, rather than being able to take refuge in an effective anti-harassment policy. This would create an incentive for companies to police the speech of their supervisors far more dramatically than current law requires. Schultz also argues that a harassment complaint, in which a woman alleges that her competence has been undermined, should open the window on a broad inquiry into the treatment of women in the corporate workplace more generally. The criteria for hiring, assignment, and promotion would all come under scrutiny. The only way that a company could be confident that it could avoid liability for the remarks of its employees, Schultz suggests, would be to achieve some kind of proportional representation of women at all levels of the corporate hierarchy.

Schultz's ultimate goal, gender proportionality and gender parity, is a far more ambitious endeavor even than MacKinnon's effort to eliminate pornography and to narrow the scope of sexual expression in the workplace. Schultz might also suppress more speech at the core of the First Amendment than MacKinnon. Imagine, for example, a San Francisco firefighter who is appalled by a consent decree in which the Fire Department agrees to hire women in proportion to their numbers in the population as a whole, even though the applicant pool of women who want to be firefighters is less than 20 percent. What if the angry male firefighter, questioning the overall ability of women hired under this scheme, said something like this: "This new group of women that we've been forced to hire just isn't up to the job." Under Schultz's regime, such comments might expose the Fire Department to ruinous damages, and would increase the legal pressures to achieve gender parity, even though the comment is a fine example of core political speech.

Schultz's attempt to refocus harassment law on gender discrimination rather than sexual expression deserves respect; but she, like MacKinnon, wants to use harassment law as an engine for the wholesale restructuring of the American workplace. In both Schultz's and MacKinnon's accounts, workers cannot

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be protected from sexualized or demeaning comments unless the workplace itself is transformed. This is a long way from the classically liberal vision of Ginsburg, who sought to guarantee equal access for individual women to choose professions on the basis of their individual talents and preferences, instead of using sex discrimination law to generalize about the appropriate choices and desires of women as a whole.

V.

What, then, would harassment law look like if it were reformulated in gender-blind terms? Title VII refers to discrimination in the terms and the conditions of employment, and this would certainly include firing a woman or a group of women because of their sex—that is, because the employer does not like women in general, or likes them too much and wants to protect them from the indignities of the workplace. The existing law of quid pro quo harassment, in other words, could largely be preserved in a gender-blind world.

It is arguable, as courts held in the 1970s, that a supervisor who threatens to fire a woman because he is attracted to her, and is uncomfortable working with her after he has been rebuffed, is discriminating on the basis of her rejection of his sexual advance, and not on the basis of her sex. It would clearly be sex discrimination, however, if all women in the workplace were forced to endure the ordeal of being threatened with losing their jobs unless they succumbed to sexual advances, because the terms and the conditions of employment would then be different for women than for men. And the analysis is at least arguably similar if a supervisor only threatens to fire that subset of women that he is attracted to, even if it includes only a single woman.

Hostile environment harassment is another matter. A concerted campaign to drive all women, or some women, from the workplace by hassling, teasing, and abusing them would change the terms and the conditions of employment in a way that should be actionable under Title VII; but the law cannot forbid comments that only some women might find offensive without generalizing about the sensibilities of women in a way that offends the gender-blind construction of the idea of equality. For this reason, several commentators have suggested refining the hostile environment test in a way that imposes liability only on speech whose purpose is to annoy a woman or a group of women in particular, rather than on speech that supposedly has a disparate impact on women in general. Thus Eugene Volokh argues that speech, to qualify as harassment, must be directed at a particular listener. A group called Feminists for Free Expression would require "a pattern of targeted and / or intentional verbal abuse." Cathy Young suggests that "hostile environment" claims should be based on actual hostility; she would narrow the EEOC formula to conduct that has the "purpose and effect" (rather than "purpose or effect") of "unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

Where does that leave what Mark Hager calls "mashing," or sexual overtures, as opposed to "bashing," or derogatory and demeaning treatment of women? In a provocative article in the *Connecticut Law Review*, Hager argues that sexual overtures among nonsupervisory coworkers should be regulated through tort law rather than through sex discrimination law. This represents a major shift in legal paradigm, and a welcome one. The restoration of liberal sanity to the discussion of sexual harassment and the law may indeed require that the sex discrimination model be exchanged for the tort model.

Wrongful discrimination implies some kind of contempt for a category of people, Hager argues, but harassing sexual overtures are a different matter. They mostly represent a combination of erotic fixation and insufficient moral restraint. In addition to offending common sense, the construal of erotic fixation as "discrimination" obscures the moral harm involved when sexual advances in the workplace really are egregious and really do go too far. "The harasser's wrong consists of contempt for the dignity and autonomy of another human being," Hager wisely observes, "denigrating her intrinsic worth and treating her as a mere means of gratification. The victim's harm consists of having her dignity disparaged and her autonomy impeded. Hence, harassment is inherently tortious. Its essence is of non-consensual personal invasion." There is no inconsistency, in other words, between President Clinton's abstract support for women's rights and his behavior as an appalling cad.

Genuinely malicious advances, Hager argues, could be punished under an existing branch of tort law that compensates victims who have suffered "intentional infliction of emotional distress." Employers would be liable for a pattern of directed harassment by a supervisor only if they manifested "deliberate indifference" to the offensive conduct. This sort of legal standard would dismantle the inquisitorial machine that the sex discrimination version of sexual harassment law has constructed. Courts would be encouraged to weigh the harms of harassment against the burdens of preventing them. As for harassment by coworkers, Hager proposes that employers should only be liable when they are deliberately indifferent to a pattern of targeted abuse by more than one worker, joined by at least one superior.

To be actionable as a tort, a sexual advance would have to be "outrageous" and the distress that it provokes would have to be "severe," which means that many indignities that are now illegal under discrimination law would no longer be legally regulated. This represents a shrinkage in the scope of sex harassment law; but only the tort paradigm, I think, can vindicate the promise of a gender-blind ideal that treats women and men as autonomous individuals, rather than as prisoners of gender stereotypes and sex-based generalizations. The tort model would encourage individual responsibility by placing the blame for inappropriate conduct on the perpetrator, rather than the employer, and would increase the incentives for women to protect their own dignity rather than passively relying on employers to protect it for them. It would empower individual women and men by allowing them to decide whether or not offensive comments interfered with their ability to do the job, rather than using them as helpless symbols in the gender wars as a whole. It would end the unconscionable invasions of privacy that are now a regular feature of the workplace, in which employers are forced to engage in hideous and paternalistic investigations of consensual affairs between employees and supervisors, for fear of liability. And given the extensive evidence that men and women perceive the same situations differently, a tort paradigm would increase the possibility of understanding between the sexes by encouraging women or men to complain when they feel offended.

If the costs of the current harassment regime were limited to disrupting the careers of a small group of unfortunate employees who have failed to adjust quickly enough to the transformation in social norms that govern interactions between men and women at work, then it would be easy enough for society to bear them. All of us should try to behave like ladies and gentlemen in every sphere of our lives; and at this stage in our gender politics, anyone who is reckless enough to treat colleagues, employees, students, and fellow citizens with less than Victorian respect deserves, in some measure, the ignominy that will follow. But the real costs of harassment law are not simply the careers that it disrupts and the work-

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places that it fills with confusion and fear. The costs are, more generally, to the liberal dispensation in America.

Constructing legal rules based on stereotypes about the essential natures of men and women is the central evil that Ginsburg's ideal of gender-blindness was designed to banish. The law, Ginsburg rightly insisted, can never provide a complete description of the person. The legal person is an abstraction. In this act of abstraction, however, lies the possibility of neutrality. The denuding of the individual of his or her particular traits or characteristics, so as to arrive at a standpoint from which all may be viewed impartially, is not the debasement of an identity but the construction of an identity, which is the identity of citizenship. It is especially important now, in this golden age of difference in America, in which universalism is on the run and perspectivism is a reality to which politicians and professors gladly pander, that we appreciate that equality is a positing of sameness. The United States today is a proudly splintered polity; but the sameness that liberalism stubbornly imputes to all men and all women is a sublime sameness.

For the law, certainly, it is the very condition of objectivity. But then, these are not the best of times for objectivity either. In the gender-blind view, however, objectivity is not an illusion or a disguise for power, and equality is something that all men and women have inalienably in common. It is a lowest common denominator that is also a highest common denominator. In our madly sexualized culture, to be sure, the ideal of gender-blindness may seem especially elusive. But if it is not possible to look beyond the gender (and the race and the class) of an individual, it is not possible to deliberate and meet as citizens on equal terms.

Gender-blindness was a tremendous legal and philosophical achievement, perhaps the greatest achievement of legal liberalism since the sexual revolution. Yet no sooner was it enshrined in law than it suffered a radical assault from the gender essentialism that threatens everything it stands for. Two decades ago, when women were beginning to enter the workplace in meaningful numbers, MacKinnonite generalizations about the subordination of women to men may have had more of a foundation in reality, and they may have served as a useful spur. But those generalizations are neither accurate nor harmless any longer; and philosophically they were always a betrayal of liberalism. Today the victims of patriarchy have been joined by the victims of essentialism. This has to stop. We must make ourselves blinder if we are to see more. •

The Saint

BY ALAN WOLFE

Just As I Thought by Grace Paley

(Farrar, Straus and Giroux, 332 pp., $24)

In an interview in 1984, Grace Paley was asked about her youthful experiences with civil disobedience. Recalling how she and her neighbors refused to allow buses through or real estate development around Washington Square Park in Manhattan's Greenwich Village, Paley responded: "One of the things I learned was stubbornness. And I've thought more and more that that's the real meaning of nonviolent civil disobedience—to be utterly and absolutely stubborn." The title that she has given this collection of essays, stories, speeches, introductions, poems, and remembrances confirms that this is a writer who is proud of the fact that, in the course of a long and productive life, she has never changed her mind.

"My family was a rather typical Socialist Jewish family," Paley relates about her childhood in the Bronx. Other children fought over sports or clothes, but the children in her world fought over Stalin and Trotsky. Although her parents were not religious—her father refused to attend synagogue—the family thought of itself as Jewish in an ethical and cultural sense. Jews, as Paley writes, "were supposed to be better" than others. And the political outlook that she absorbed from her extended kin was remarkably akin to this kind of abstract, moralistic, ecumenical Judaism.

Despite hearing tales of family conflicts between anarchists, socialists, and communists from the old country, Paley was never sectarian in the ways of the City College intellectuals of Alcove I and Alcove II. As a child she had no doubt—and she continues to show no doubt—that her idealistic, romantic, and proudly impractical leftism makes her a better person than those war-making, planet-destroying, female-hating, violence-prone, money-making men whom she is determined to confront. Paley's early demonstrations at Washington Square were inspired by the same tenaciously held beliefs that motivated her later feminism and her attacks on America's involvement in the Persian Gulf: power is bad, the downtrodden are good, and the duty of the left is to speak for the truth of the latter against the hypocrisies of the former.

A society such as America's ought to admire folks who stand back and resist, and Paley clearly offers her book to be admired. Compared to the sterile theoreticians of the tenured class, Paley's lack of pretension is certainly refreshing. When she criticizes leftists who send their children to private schools, who can doubt that she sent her own children to public schools? She is not that kind of "progressive" whose denunciation of power masks a craving to exercise it. Paley's radicalism is of the old-fashioned sort: anti-materialist, a bit Puritanical, committed to action. Dividing her time between Greenwich Village and Vermont, she carries forward a tradition of dissent shaped by the bohemian radicals who gravitated to the former and by the pacifists such as Scott Nearing who made the latter his home.

Yet the adjectives that Paley uses to describe her stubbornness—"utterly," "absolutely"—give pause. Can we ever be completely sure that our positions are the correct ones? Ought we to admire absolutism in politics, no matter how idealistic its motives? Surely stubbornness is not among the most attractive or the most elevated of human qualities. The stubborn person is often an ignorant person, and willfully so. Here I stand and nothing will move me: it sounds like passion, but what about all the discordant data of the lived world? Dogma cannot be defeated dogmatically.

To be stubborn, moreover, is all but to proclaim one's hostility to democracy, for the resister intentionally chooses not to listen to the persuasions of others. Most serious of all, though, for a person whose reputation is based upon the writing of poetry and fiction, is the mental limitation that stubbornness represents. To prize stubbornness is to diminish development, to deny variety, as if it were not important, or not the duty of a really serious mind, to correct or to put aside the beliefs of one's youth in the light of

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what one learns through exposure and experience. Fidelity must never be mindless. Mules are not the best role models for human beings, especially for those who take it upon themselves to lecture others in the ways of the world.

Since she is so defiantly resistant to change, Paley tells her readers far more about her version of left-wing politics than she intends. She views herself as a prophet railing against the injustices of the world around her. Yet her book can be read as a demonstration of why the kind of leftist politics she embodies is so unappealing to the majority of Americans.

The Bronx of Grace Paley's youth no longer spawns aspiring Jewish writers. Greenwich Village is too expensive to be the center of any kind of radicalism. The nonconformists of Vermont have left Ben and Jerry's do-goodism behind to fight furiously over the distribution of property taxes. All this can be lamented; but before shedding too many tears over the fact that America destroys its radical breeding grounds, we ought first to recognize the benefits of having fewer writers and intellectuals as complacently convinced of their righteousness as Grace Paley.

"The difference between writers and critics is that in order to function in their trade, writers must live in the world, and critics, to survive in the world, must live in literature. That's why writers in their own work need have nothing to do with criticism, no matter on what level." Paley's words come from one of the first talks that she ever gave, a mid-'60s effort to explain her craft to aspiring women writers. Whatever one thinks about her literary point—my own taste in writers leans toward those who are also critics—it offers an explanation of her career as a political activist. For the activist, unlike the writer, *is* a critic, of society rather than of literature. Should the critic, like the writer, live in the world? Paley's unambiguous answer is that she should not. For the world is unjust, and any effort to accommodate oneself to it, even by trying to understand it, threatens one's moral purity.

The dangers in such a rejection of the world are obvious, though they are not obvious to Paley. One of them is the likelihood of getting reality wrong. Is it really true that one in three women in America will be raped in the course of her lifetime? Are there really "gangs of politicians and medical men" in this country who are prepared to sterilize women for "the country's good"? Do "tens of thousands of American women live much of their lives in cages"? Was it correct to say in 1986 that "the objective facts of world events right now are worse than at any other time"? Did the House of Representatives truly receive a "terrible shock" when Vermonters elected a socialist to join their ranks? Are the elderly truly discriminated against in America?

All these questions have factual answers, but the radical critic is not interested in knowing what the factual answers are. Why should she, if things are just as she thought? Defiantly cut off from the world, the radical critic is also cut off from any obligation to make statements about the world that can be verified. I appreciate the art of a great storyteller when I am reading a work of the imagination, but social and political criticism is not entirely, or even mainly, a work of the imagination, and stories are not really what I want from someone who is trying to instruct me about what is wrong with the world.

Paley does not generally understand the difference. She begins and ends many of her talks with stories or poems, often in ways that make it hard to distinguish between what is offered as timeless insight into the human condition and what is offered as an account of a particular historical reality or an analysis of a concrete condition. One such effort is called "A Midrash on Happiness," originally delivered at a conference organized by *Tikkun* magazine. ("I don't think this is really a midrash," she breezily announces, "but I called it that.") The main character of the story, Faith, is torn between her personal happiness and the ugliness of the world around her. Faith desperately wants women friends with whom she can discuss

> on the widest, deepest, and most hopeless level the economy, the constant, unbeatable, cruel war economy, the slavery of the American worker to the idea of that economy, the complicity of male people in the whole structure, the dumbness of men (including her preferred man) on this subject.

All this is told by way of introduction to Paley's autobiographical reminiscences about her beginnings in the Bronx. No doubt her sympathetic audience loved the story; but I could not help thinking that Paley was taking the liberty of using an imaginary situation to offer a rhetorically overloaded and generally incorrect analysis of America.

Alas, Paley's version of leftist radicalism has become little more than a story itself. In this work of the imagination, America and all that it stands for is bad and all the countries that challenge its power are good. Only a storyteller could write in Paley's gushing terms about the idyll of North Vietnam. "Water spinach," she exclaims, is "a wonderful vegetable." And only a fabulist could write about her fellow writer Christa Wolf and never discuss her work for the East German secret police.

It is fitting, if also sad, that it takes an imaginative writer such as Paley to illuminate so many of the reasons for the left's failures in America. For it is clear that people who think like Paley are far more comfortable telling stories to each other—they live, as Paley piously puts it, in literature—than they are dealing with reality. Still, there is one interesting story in Paley's life, though she never tells it in this book. Her family's roots were in the socialist left, not the communist left; and socialists have been our most effective truth-tellers about communism. Yet Paley, reared in this honorable tradition, somehow succumbed to precisely the sort of double-standard approach to other countries that so thoroughly discredited communism as a moral force in American life.

The impolite word for this sort of thing is lying. I do not think that Grace Paley intentionally distorts the truth, but I do think that she embodies a variety of radicalism that has consistently placed its cause before any obligation to be scrupulous about its motives, its analyses, and its plans. In a charming little piece from 1973, Paley announces her ideological opposition to cookbooks. This comes as no surprise, for cookbooks codify rules, and rules are anathema to the anarchistically inclined. The only problem is that Paley offers her admonition against cookbooks in a preface to a cookbook. It is a trivial example, but in its way it is a revealing illustration of how the American left has come to raise itself above the consideration of its own inconsistencies and inadequacies. Cookbooks, of course, are not evil; and neither, by the way, are rules. How much more honest it would be for the left to admit that it actually likes things (cookbooks, for example) that the rest of America also likes! But then it would have to surrender its condescension, which it mistakes for a critical standpoint.

Paley, no doubt, would protest my depiction of her as indifferent to, if not actively contemptuous of, obligations to truth. "It is the poet's responsibility to speak truth to power ... to learn truth from the powerless," she ringingly advises younger writers. In the various plots that Paley offers, the dissenter is invariably sustained by her conviction that power corrupts, and so she, the opponent of power, occupies the ethical high ground. About her own thinking, you

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see, there is no occasion for skepticism. Everything is just as she thought. She is the complacent enemy of complacency.

In 1982, a group of female peace activists decided to demonstrate at the Pentagon, and Paley was called upon to write the "Women's Pentagon Action Unity Statement" that defined their objectives. Of all the materials collected in her book, this is the most detailed in its contrast between the purported evil of America's policymakers and the purported goodness of those who contest them. War planners, bankers, and corporate executives are connected by "gold and oil," Paley wrote, while feminists, ecologists, and pacifists "are made of blood and bone ... of the sweet and finite resource, water." "We know there is a healthy, sensible, loving way to live," the statement concluded, promising, in typical Paley fashion, that "if we are here in our stubborn thousands today, we will certainly return in the hundreds of thousands in the months and years to come."

It never occurs to Paley that her views may not be quite as moral as she thinks, even when direct evidence of their possible amorality—even, on occasion, of their possible immorality—is presented to her. A moral person, confronted with choices all of which are compelling but not all of which are right, searches for an appropriate way to distinguish the one from the other. But Paley has little taste for that kind of reflection.

Consider her essay about an abortion that she had back in the days when they were illegal. Reflecting her admirably pre-Yuppie brand of radical politics, Paley admits to not liking the slogan "abortion on demand," for it trivializes what she acknowledges is "a very serious thing to undertake." The real question, she continues, is the stage of your pregnancy; treating abortion as just one more surgical procedure to be demanded or not demanded as the consumer sees fit ignores the fact that a six-month pregnancy is morally different than a one-month pregnancy. But after introducing these important points, Paley goes on to endorse ... abortion on demand. "Not that I think if a woman goes to a clinic and wants to have an abortion, she shouldn't have it when she needs it," she writes. "It's just that there's a lot to think about." But none of that thinking is done here. Moral reasoning must never interfere with feminist solidarity.

An even more striking example of Paley's political approach to morality involves her truly bizarre position on the question of whether Americans ought to have been permitted to adopt Vietnamese children whose parents had been killed or lost in the war.

You deserve a factual look at...

"The Arabs of Israel"

Are they a "persecuted minority?"

The world is much focused on the developments in Judea/Samaria (the "West Bank") and the Gaza Strip, in which, for the most part, Israel has relinquished sovereignty and authority to the Palestinian Authority (P.A.). Ninety-eight percent of the Arabs in these territories live now under the rule of the P.A. There is some question whether or not they are better off than before. But many believe that Arabs in Israel itself are a "persecuted minority."

What are the facts?

Israel is a Democratic Country. Israel is an open, pluralistic, and egalitarian society. Different religions, cultures, and social traditions coexist. Protection of such diversity is embedded in Israel's traditions and confirmed by the government. About 20% of the population (over one million people) are non-Jews, most of them Arabs, and some Druze. Like all other Israeli citizens, they have full rights to vote and to hold elective office. Both Arabs and Druze hold seats in the Knesset, the Israeli parliament. Every Knesset, since the founding of the State in 1948, has had Arab and Druze members. All transactions in the Knesset are simultaneously translated into Arabic, and Arab members may address the Knesset in Arabic.

"Contrary to propaganda...the Arabs in Israel enjoy every civil right and have the same status under law as Jewish Israelis."

It is official policy of the Israeli government to foster the language, culture, and traditions of the Arab minority, in the educational system and in daily life. Arabic is an official language in Israel, together with Hebrew. Israel's Arabic press is the most vibrant and independent of any country in the region. There are more than 20 Arabic periodicals. They publish what they please, subject only to the same military censorship as Jewish publications. There are daily TV and radio programs in Arabic. Arabic is taught in Jewish secondary schools. Israeli universities are renowned centers of learning in the history and literature of the Arab Middle East.

Education and literacy of the Arab population in Israel is as high as and probably higher than in any Arab country. The literacy rate among Israeli Arabs is 95%, virtually the same as for Israeli Jews. There are close to 1,000 Arab educational institutions in Israel, with about 300,000 students—just about 25 times as many as in 1948, when the State of Israel was created. Ninety percent of Arab children attend school, probably the highest ratio of any Arab population anywhere. Israeli universities and technical institutions are freely available to the Arabs. About 5,000 Arab students attend such schools.

Israeli Arabs Enjoy Full Equality in Law and in Fact. All religious communities in Israel enjoy the full protection of the State. Israeli Arabs—Moslems, as well as many Christian denominations—are free to exercise their faiths, to observe their own weekly day of rest and holidays, and to administer their own internal affairs. Each community has its own religious councils and courts, and has full jurisdiction over religious affairs, including matters of personal status, such as marriage and divorce. The holy sites of all religions are administered by their own authorities and protected by the government. In contrast to the non-Israeli Arab world, Arab women in Israel enjoy the same status as men. Israeli law grants women equal rights, including the right to vote and to be elected to public office, prohibits polygamy, child marriage, and the barbarity of female sexual mutilation. It has thus vastly changed the status of women, to far above that of any country in the region. Israeli health standards are by far the highest in the Middle East. Israeli health institutions are freely open to all Arabs, on the same basis as they are to Jews.

There is, however, one difference between the "rights" of Arabs and Jews in Israel. Israeli and Druze men are required to do three years of military service and then serve one month every year until they are 50. Arabs are exempted from military duty and are not required to perform any compensating civilian service. Since the surrounding Arab states, with the exceptions of Egypt and recently of Jordan, are the avowed enemies of Israel and are dedicated to its destruction, this exemption is granted by the Israeli government to its Arab citizens, so as to spare them conflicts of loyalty and conscience.

Contrary to propaganda and to what many believe, the Arabs in Israel are full-fledged citizens, enjoy every civil right, and have the same status in law as Jewish Israelis. In summary, they enjoy the highest standards of living and liberty of any Arabs in the Middle East. It is instructive and sobering to compare the condition of the approximately one million Arabs in Israel with that of the pitiful remnants of Jewry in Arab countries. Jews have been living in Arab countries for almost 2,000 years. Under Arab dominance, they were always third-class citizens and subject to harassment and persecution. There were about 900,000 Jews in Arab countries in 1946—now there are fewer than 25,000. But there are now over one million Arabs in Israel, as against 150,000 in 1948—an almost seven-fold increase. These figures alone would seem to prove that things can't be all that bad for Arabs in Israel.

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Thundering with righteousness, she denounces the fact that "handicapped, warmutilated children had been taken from a country where it would be the responsibility of family and community to keep them functioning in the ordinary life of the world." Not only were they uprooted from their natural home, "they were brought into a society which specializes in institutions, dumping grounds for the handicapped and the old, whose own Vietnam veterans are hidden in the recesses of Veterans Administration hospitals, whose black or handicapped orphans are unadoptable." It galls Paley that "children who might be subjected to racial prejudice were being sent to the United States, the center of that pathology."

Everything that is wrong with Paley's worldview is nicely represented in this diatribe. Her father, she writes, was happy to come to America, which he viewed as a land of freedom, but Paley, growing up here, can only describe her society in the most negative of terms. Her weird notion that there are hidden veterans in America betrays a conspiratorial mentality that differs little from those conservatives who believe that there are American soldiers still closeted away in Vietnam. Her romanticization of wartime Vietnam, as if that devastated society still had flourishing families and communities, reinforces the reader's uneasy feeling that Paley was against the airlift of Vietnamese children to the United States for no other reason than that the communist government of North Vietnam was also against it.

"I must say that I don't believe women could have invented the insane idea of transporting these children," Paley writes. This makes it all the more striking that, after her article was published, one Suzanne Dosh of Lakewood, Colorado responded in a letter (which Paley reprints) that she was "appalled by the misinformation and lopsided reporting" in Paley's account of the issue. Dosh pointed out, quite sensibly, that these children were totally abandoned through no fault of their own. As many as 80 percent of those left behind died, and the rest of these children were consigned to orphanages. Would Paley have abandoned a nine-year-old boy half-killed by American bombs, a half-black infant with severe nerve damage, a sick asthmatic boy, or a Montagnard girl so sick that she was left for death? All four of those children, Dosh told Paley, happen to have been adopted by her. It is women, by and large, who love and care for such children, Dosh concluded. "Their reverence for a single human life crossed national, cultural, racial, social, religious, political and economic boundaries."

It is not very difficult to establish the real moral heroine of this tale. For Paley's support of a lawsuit designed to stop the airlift of the Vietnamese children—an action that would have condemned countless numbers of children to death or poverty in the faint hope that the parents from whom they were separated might not really be dead, at a time when a sanctuary and a better life in America were available to those children—strikes me as immoral in the extreme. A person moved by moral considerations, moreover, would have been ashamed by Dosh's response, and would have promptly apologized for her mistaken analysis.

But Paley does no such thing. After professing admiration for Dosh's "extraordinary generosity," she replies to her letter simply by repeating her main points, among them this one: "The Orphan Airlift was a cynical political game played by the government in the hope that drama and sentiment would persuade Americans to give military aid to Saigon and continue the war." For Paley, a political statement always seems to take precedence over a moral statement; or, to put it differently, she is dead to the difference between them.

It is precisely this moral tone-deafness that renders Paley's account of her meetings with Soviet dissidents so pathetic. A true revolutionary tourist, the homes that she visits in the Soviet Union remind her of her home in the Bronx. After a number of visits, she comes to love Moscow. She is delighted by GUM, which she describes as "the lively, mobbed Macy's of Moscow." She quotes a Russian dissident's observation that he is treated better by the Moscow police than he would be treated by the police in America.

Paley views herself as an American dissident, and so it is essential that she should talk with Russians who oppose their own government. She imagines that they are her counterparts. Yet what results—or what should have resulted—is a certain amount of cognitive dissonance. "Thank God for the United States," Elena Bonner exclaims to Paley when she tries to bring up America's role in Chile; and Mrs. Sakharov also praises the anticommunist Senator Henry Jackson, and even expresses the hope that he will become president. Over and over again, the Soviet Union's courageous dissidents try to explain to their bewildered American visitors how little they understand. So what's an American dissident to do? Well, Paley could have joined these people on one of their demonstrations. She allows that the thought crossed her mind. But she was in Moscow as a delegate to the World Peace Congress, and there were so many meetings to attend.... Even from her own self-serving account, the reader is left in little doubt that Paley, however much she was fooling herself, fooled her Russian friends not at all. Knowing full well that any delegate to the World Peace Congress had chosen to side with the Soviet state, they treated her as the ugly American that she was.

Paley's morality knows one point and one point only: everything that America does is immoral. Her thinking about the United States is utterly definitional. How do you feel about Nicaragua or El Salvador? people ask her. "Well, first I don't judge them. I don't judge other people, other nations that our government and their own have pressed beyond bearing. In the second place, how can I judge them in the position they're in when I myself, without such experience of oppression, have lived with all the abstractions of war in my own head." In her determination not to act as a thinking person capable of judging the behavior of people different from herself, Paley is not only tendentious and selective in her sympathies, she also underscores the extent to which the left in America has happily chosen the easy path of political sentiment over the difficult business of moral reckoning. Who else but an American radical could offer a voice of conscience unexercised by the rigors of conscience?

I know nothing about Suzanne Dosh other than the letter that she wrote to Grace Paley, but I think of her as the sort of American moved by religion and altruism to do the right thing. Most Americans would kindle to the likes of Ms. Dosh and ignore the likes of Ms. Paley. They would be correct to do so.

"Most of the pieces in this book were written because I was a member of an American movement, a tide really, that rose out of the civil-rights struggles of the fifties, rolling methods and energy into the antiwar, direct-action movements in the sixties, cresting, ebbing, as tides do, returning bold again in the seventies and eighties in the second wave of the women's movement—and from quite early on splashed and salted by ecological education, connection, and at last action." It is not surprising that someone who values stubbornness as a personal characteristic would see the world as stubborn. Thus, for Paley, the left of her lifetime is all of a piece. Since the left contains good ideas, and since it is populated by good people, it stretches in one unbroken line from the 1950s to the 1990s. A left is a left is a left.

Yet the evidence for a radically different interpretation, according to which the recent history of the left is not the

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story of one movement but of many movements, noble and cynical, is contained in Paley's own book. I have no doubt that Paley's early involvement with social and political protest was authentic and idealistic. Motivated by a desire to do good, she can be easily pictured standing relatively alone, holding her placard, offering herself as a witness against injustice and hypocrisy. In the 1950s and 1960s, there really was what Paley calls "an American movement," an incipient, religiously inspired, uncorrupted outburst against racism at home and imperial ambitions abroad; and she was among its finest representatives.

But something happened to that movement in the late 1960s. Corrupted by its anger, fractured into its many constituents, seduced by its dreams of power, the American left put aside its goal of moral witness. Some urged violence. Others opted for careers in politics. Still others found solace in the championing of their identity. Yet no honest observer could conclude that political radicalism as it manifests itself in the late 1990s has much in common with the innocent anarchism and the sweet pacifism of the early 1960s. No longer committed to being the voice of truth, skeptical of morality, hostile to the ideal of a common humanity, apologetic about violence, suspicious of religion, self-absorbed, selective in its response to oppression, contemptuous of its own country's ideals, the left for which Grace Paley tries to speak today bears little if any resemblance to the left in which Grace Paley grew up.

Now here is a story which cries out for a great storyteller. But Paley fails to tell it, and her failure to tell it suggests that she may not be so stubborn after all. Someone true to the radicalism of her youth would have produced a very different book than this one. That other book, the one that Paley did not write, would have been just as committed to pacifism and the hatred of injustice as this one, but it would have expressed the voice of someone for whom truth and morality still mattered. In so doing, it would have understood, as this book does not understand, that an American movement is a part of America, that both the country and its dissenters have their spots of pride and their spots of shame, their good people and their bad people, their stories worth celebrating and their stories worth condemning. And so Paley's sentimental and sanctimonious book inadvertently exposes what went wrong with the American left. Since she is sure that everything is just as she thought, she has nothing to teach about how the left can be set right. •

The Life of a Picture

By E.V. Thaw

Portrait of Dr. Gachet: The Story of a Van Gogh Masterpiece by Cynthia Saltzman

(Viking, 406 pp., $25.95)

What a good idea for a book this is! Cynthia Saltzman has shrewdly set out to trace the principal themes of the modern age by recording the movements and the vicissitudes of a single painting, a masterpiece that brought the highest price ever recorded for a work of art. Van Gogh himself said that his *Portrait of Dr. Gachet* bore the "heartbroken expression of our time."

On a subject about which we thought everything was already known and too much was already written, Saltzman has come up with substantial new material, with new facts that correct old errors. It seems that Johanna van Gogh-Bonger, traumatized by the death of her husband Theo, Vincent's younger brother and financial supporter, only six months after the artist's suicide in 1890, found a better market and a greater interest in Vincent's paintings and drawings (with which she was saddled) in Northern Europe, Germany, and Scandinavia. Those places already had some appreciation of Munch and his version of radical expressionism.

Saltzman's account of *Dr. Gachet*'s wanderings instructs us about the pioneering days of the collecting of, and the dealing in, modernist art, well before the better known careers of the dealers in Cubism and the great Russian collectors and Gertrude Stein and the rest. An almost totally forgotten figure emerges from the mist—a Danish avant-garde painter and collector named Alice Ruben, who was the first to buy *Dr. Gachet*. She had seen van Gogh's work as early as 1893, in a "two man show" with Gauguin in Copenhagen, and her first husband, Emil Hannover, already owned one of Gauguin's fine pictures of Brittany. She purchased *Dr. Gachet* in 1897 from the young (and now legendary) dealer Ambroise Vollard, who was acting for Johanna van Gogh, the artist's sister-in-law and heir. The first price for this painting (which sold for $82 million at Christie's in 1990) was 300 French francs, or $58. Saltzman, a stickler for accuracy, calculates the value of the 1897 price to be approximately $1,000 as of 1995, a low price but not an unusual one for an untested picture.

We also learn much about the spread of interest in Cézanne and van Gogh. The firm of Cassirer in Berlin was particularly a focus of the taste for this art in enlightened circles in pre-World War I Germany. Marianne Feilchenfeldt, now 88, and in possession of a remarkable mind and memory, and her son Walter, the namesake of his father Walter Feilchenfeldt, the last active director of Cassirer, provided Saltzman with extraordinary information as well as access to remarkable records.

From Alice Ruben, *Dr. Gachet* went to the Cassirer gallery in Berlin, via the painter and designer Mogens Ballin. Paul Cassirer sold it to Count Harry Kessler, a remarkable personality in the early days of German modernism. (This book provides the best account of Kessler that I know in English.) Kessler, who restlessly changed his collection, consigned *Dr. Gachet* to Eugène Druet, a dealer in Paris, who at first did not succeed in a sale, and then bought the painting for stock. Druet lent it to Roger Fry's great Post-Impressionist show in London in 1910 (three years before the Armory Show in New York), and finally he sold it to the Städel Museum in Frankfurt in 1911.

In Frankfurt, the picture became a famous modernist icon, a glory of a museum with a small but splendid collection of Old Masters, and a special feather in the cap of Georg Swarzenski, a museum director with a great eye and humanist outlook. In an article in *The Nation* in 1911, Roger Fry wrote:

> Those who remember the outcry which van Gogh's portrait of Dr. Gachet caused last year at the Post-Impressionist Exhibition will learn with some surprise that Dr. Swarzenski has had the courage to buy it for the Städel Institute in Frankfurt, where it will take its place beside the masterpieces of Dutch and Italian art. We in England shall probably wait twenty years and then complain that there are no more van

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Goghs to be had except at the price of a Rembrandt.

The picture remained on the wall of the Städel in Frankfurt until 1933, when Swarzenski, in a prescient gesture only a few weeks after Hitler came to power, removed it and all the museum's modern expressionist canvases, and secreted them in a small storage room hidden under the building's roof. It was fated never to return to the public gallery where it had hung for 22 years.

In keeping with the ambition of Saltzman's inspired book, the portrait of the doctor coming to rest in Frankfurt's Städel museum becomes the occasion for a concentrated discussion of culture in what Saltzman calls "the 'other' Germany": a description of the Städel itself and its history; of the intellectual life of Frankfurt and its assimilated Jewish population; and, like the mini-biography of Kessler, a good look at the brilliant museum director Swarzenski, who helped to create such important private collections as that of Robert von Hirsch. From Saltzman's tour of the context and the career of *Dr. Gachet* in the 1920s, one emerges with a strong sense of the atmosphere of German cultural life, good and bad, in the Weimar Republic.

The resonance of this great painting as an icon amidst the turbulence of what Swarzenski called a period of "turmoil, mystification, and madness" becomes louder and deeper as the cultural policies of the Third Reich advance. In 1935, after an initial phase of uncertainty about whether modern expressionism threatened Nazi ideology (Goebbels seems to have had a taste for it, and watercolors by Nolde hung in his office), a letter from Berlin was sent to Frankfurt asking for photos of several of the Städel's greatest modern pictures, including *Dr. Gachet*. Alfred Barr, it appears, had just tried to pull strings to borrow it for his great van Gogh show at New York's new Museum of Modern Art, calling it the artist's greatest portrait. It stayed in Frankfurt in hiding, but Berlin now became insistent upon selling it, and the Nazis were in the midst of organizing their infamous "Degenerate Art" exhibition in 1937, which consisted of paintings and sculptures that had been removed from German museums. Swarzenski (soon to be fired as Director, but still clinging to his prestige in intellectual circles), and the Director-to-be Alfred Wolters, and the Nazi mayor of Frankfurt, Friedrich Krebs, all tried everything to keep *Dr. Gachet* in their city, but to no avail.

The Nazi politics of art collection and art expropriation is an ugly and complicated story, and Saltzman summarizes it very carefully, aided by the recent spate of books and articles on the fate of art before and during World War II. After shifting about between rival power centers in the Nazi hierarchy, the Gachet portrait finally came into the purview of Hermann Göring, the most rapacious of the Nazi art collectors, rivaling even the efforts of Hitler himself, who pursued European masterpieces for a mammoth museum that he planned for Linz, Austria. (At this point in her story Saltzman becomes dazzling in her detail.) We now know that Göring himself called Frankfurt's mayor to order that he desist from his opposition to the sale of the portrait. Acting well before the retroactive laws of 1938, authorizing the state's previous confiscations of "degenerate" art, went into effect, Göring's favorite art dealer sold *Dr. Gachet*, a fine Cézanne, and another major van Gogh to Franz Koenigs, a German living in Holland, a banker and a famous collector of master drawings. The money from this sale, about $200,000 at the time and at least $1.7 million in 1995 dollars (which puts *Dr. Gachet*, as one-third of the total price, at $575,000), was used by Göring's art agent to purchase a set of Belgian tapestries representing the Emperor Maximilian hunting. This was the politically correct Germanic taste of the time. Even Göring, then at the height of his power, had trouble explaining the legality of his currency manipulations for this deal, how this expropriated public painting ended up as his to sell. Although the Führer had decreed no compensation for museums deprived of "degenerate art," it seems that Göring, in 1940, obtained the paltry sum of 150,000 reichsmarks in payment to the Städel for *Dr. Gachet*, probably to give the removal the appearance of a legal transaction.

The next chapter of this amazing story concerns Franz Koenigs's troubles as the war approached and many of his Jewish banking colleagues and friends were scrambling to leave Germany and then Holland as the Nazi threat came closer. Siegfried Kramarsky, a Jewish banker, long a resident of the Netherlands, needed immediate repayment from Koenigs of a business debt, so as to dissolve his company and get to America. Unable to repay, Koenigs gave him *Dr. Gachet* and other artworks, which Kramarsky managed to ship to New York while he and his family waited in Canada for permission to enter the United States.

Even before the Kramarskys made it to New York, their great van Gogh portrait was already on public view in 1941 at the Metropolitan Museum, along with important nineteenth-century French paintings from the Louvre which had been away on tour when the Germans invaded France. As Saltzman reports, a new and bowdlerized provenance was now provided for *Dr. Gachet*, eliminating the Städel Institute and Frankfurt and giving no indication of the Nazi confiscation. So it was that the great portrait became well-known in America in the years during and after the war: the Kramarskys generously left it at the Metropolitan and sent it to exhibitions more often than it was on their own wall. But it was never stigmatized with the story of Frankfurt's great loss and Göring's outrageous theft.

In the postwar years in Germany, the years of the "economic miracle," much effort was expended to reconstitute the dismembered German museums. Important paintings were repurchased when they surfaced in the then-less-costly art market. The great financier Hermann Abs, head of the Deutsche Bank, who had once been Franz Koenigs's assistant in Amsterdam, became a leader in creating syndicates to bring back to Germany works of art that had gone abroad. He was the eminence grise behind the German museum acquisitions, in 1978, of Robert von Hirsch's best medieval treasures and early German drawings at auction at Sotheby's. In the 1950s, and again after Kramarsky's death in 1961, Abs tried to buy *Dr. Gachet* for Frankfurt, but by then it was in a family trust. Further research into how the picture left Germany only served to reinforce the legality of its sale under then-prevailing German law.

With a wonderful roundup of anecdotes and vignettes about the art world and the art market in the 1980s, Saltzman prepares us for the climax of the picture's history. We learn much about the Metropolitan Museum, its great expansion in the 1970s, its two van Gogh exhibitions, first Arles and then St. Remy and Auvers. The display of the work as it was concentrated in the places in which it was painted and drawn, with important new scholarly information about sequence and dating, corrected some of the myths that had distorted previous studies of Van Gogh. (He was revealed to have been a consummate professional, rather than the inspired madman of popular belief.) We are given intelligent glimpses of the auction world in the booming 1980s: the sale of Van Gogh's *Sunflowers* to Japan for almost $40 million, leaping far over the previous record of about $10 million for a painting; and then the sale of Van Gogh's *Irises* for $53 million. (It was later resold to the Getty, for less money, after scandalous financial revelations.)

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Finally, leading us through all the preliminary negotiations and giving us a nerve-wracking sense of the soon-to-be-perilous state of the art market, and the thinness of the contingent of art buyers at that level, and the existence of a problematic version of *Dr. Gachet* at the Musée D'Orsay, and the melancholy of the painting's subject, Saltzman brings us into Christie's salesroom at the corner of Park Avenue and 59th Street, on May 15, 1990, the same day, curiously, that the Pierpont Morgan Library opened an exhibition of Franz Koenigs's Old Master drawings from Rotterdam's Boyman's Museum. In Christie's that evening, as nearly everyone now knows, the portrait of Dr. Gachet became the most expensive work of art ever to change hands, selling to a hitherto unknown Japanese industrialist for the hammer price of $75 million, or $82.5 million adding the buyer's premium of 10 percent. And the same Ryoei Saito the next day also purchased, through a bidding agent, Renoir's *Moulin de la Galette* from the John Hay Whitney collection, this time at Sotheby's, for $78 million, the second-highest price ever paid.

In Japan, the two masterpieces remained in their packing crates in a storage warehouse. They became victims of the Japanese business decline, the art market recession that began immediately after their sale, the jockeying for control of the Daishowa Paper company (which had helped to finance the purchase by its chairman), and Japanese banks, which apparently ended up controlling both paintings. Fed up with criticism, Saito threatened that he would be burned and buried with his two paintings. Later he said that he was only joking, but the banks' control of these assets, after he died in 1996, luckily ruled out such a Wagnerian conclusion. In any case, the Renoir has now been resold privately through Sotheby's for an unrevealed price, presumably less than Saito paid for it. Everyone's guess is that *Dr. Gachet* will also be sold again—fairly soon, I suspect. It would close a wonderful historical circle if it were returned to the Städel in Frankfurt. If I were the mayor of Frankfurt, I would be in Japan on the next plane with full powers to negotiate.

I read Cynthia Saltzman's book with much pleasure; but she is a journalist, not an art historian, and there are some bloopers. Braque made his first cubist collage in 1912, not in 1908; and Belotto's great views of Pyrna, Dresden, and Vienna can hardly be termed "minor old master paintings." Still, nothing essential is out of place. Saltzman rightly recognizes the trivialization of art that occurs when super-prices get in the way of our comprehension. And she continually reminds us of Van Gogh's greatness as an artist and a prophet of the age of modernism in which we still live, despite efforts by today's artists, museums, and collectors to convince us that we have left it all behind. We need to look again and again at Dr. Gachet, posed in the iconographical position that has represented melancholy and angst in a tradition stretching back to Dürer, and showing on his face "the heartbroken expression of our times."

E.V. THAW has written about art for THE NEW REPUBLIC, *The New Criterion*, and other publications.

CORRESPONDENCE *continued from page 5*

A question of culture

To the editors:

Jagdish Bhagwati likes to downplay culture in his review of David Landes's *The Wealth and Poverty of Nations* ("The Explanation," May 25). This is not surprising since culture does not lend itself to computer models. But culture is crucial. Within many African countries, different ethnic groups display different propensities to accumulate. Nothing but culture can explain this, and only cultural changes can turn hoe-based agricultural societies into high-growth states.

MICHAEL JINDRA
Mankato, Minnesota

Risky business

To the editors:

Your mini-editorial (Notebook, May 25) asks Yasir Arafat to take "risks for peace" despite the threats of his "ultra-radicals." Is Netanyahu not supposed to take risks as well, despite his own ultra-radical coalition partners of settlers and orthodox believers?

W.H. RIDDEL
Tampa, Florida

True Jews

To the editors:

I would like to thank Leon Wieseltier for his column "Yidfellas" (May 25). His comments on Rich Cohen's *Tough Jews* only scratch the surface of the ignorance this book seems to reflect. Real tough Jews fight for their families, community, and peace. Not money. In "remembering the gangsters," Cohen is forgetting real heroes, from those in the Bible, to the Maccabees, the rabbis of the Bar Kokhba revolt in the second century C.E., the survivors of 2000 years of exile, as well as the fighters of the Warsaw Ghetto and founders of the State of Israel. The unfortunate truth is that gangsters are an American archetype, common to most immigrant groups, and ignorance of history is a pervasive modern American trait. Cohen proves that he is an American, nothing else.

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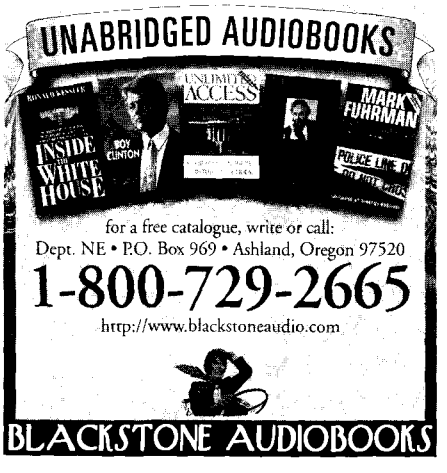

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MONTENEGRO DIARIST

Hopeless

I WAS IN NIKSIC ON MY PRE-election tour of Montenegro, drinking slivovitz with the mother of the most famous son of this land when the telephone rang. My host picked it up. The caller, it appeared, wanted to speak with "Nada"—the Serb version of the woman's name "Hope." "No, you've got the wrong number," answered Madame Jovanka Karadzic without missing a beat; "There is no Hope here. I tell you: We have no hope in this household." She hung up and winked at me.

TO MY SURPRISE AND CONFUSION, I instantly liked this 75-year-old woman, who is the mother of today's most notorious indicted war criminal. Madame K. said she would rather not talk with me about Radovan—who, having led Bosnian Serbs to mass killings of their Muslim brothers, is now a fugitive—because she cannot speak ill of her own son, and I probably would "not entirely agree" with her assessment of him.

I RESPECTED HER WISH, BUT, LATER, over coffee, she raised the topic herself, asking me if I had ever spoken with her boy. I had. And did I think that he behaved like a war criminal? I could not bring myself to inform the old woman that I thought her Radovan should be swinging from the gallows, so I mumbled something about how his vision of a Serb-run state did not take into account the well-being of other ethnic groups. I was glad none of my colleagues from the Sarajevo team of the International Crisis Group were there to see me—my reputation as the office loudmouth would have been shattered.

TO COVER MY EMBARRASSMENT, I changed the subject, asking my host about the nearby village of Petnica, where her son was born. In a biography—or rather hagiography—by Djuro Zagorac (*Dr. Radovan Karadzic: The Fanatic of the Serb Idea*, second edition, Belgrade, 1996), I had read that his actual birthplace "was not unlike the stable where Jesus Christ came to this world."

"NO, NOTHING REMAINS OF IT, only a few stones, but they are overgrown with weeds," said Madame Jovanka. "Radovan used to come back because he loved the countryside here," she added. (This, too, had been noted in the biography, along with a detailed description of Karadzic's goat-herding days, especially of his fondness for a certain goat named Lepesha. "Little Radovan was a shepherd to the small flock," the book continues. "The great Radovan, many decades later, will become the great shepherd of another great flock.") "But he hasn't been to Petnica for many years now," Madame Jovanka volunteered, anticipating my question. This is what NATO says, too, when asked whether their number one fugitive travels freely.

I HAD ALREADY STOPPED over in Petnica earlier that day and had been received with exemplary hospitality—and excellent homemade slivovitz—by local residents, all of whom proudly carry the name Karadzic. Nobody in Petnica, in nearby Savnik (where the Karadzic family moved when Radovan was five years old), or in Niksic, where Madame Jovanka now lives, seems to believe there is any justice in the international tribunal's indictment of Karadzic for genocide and crimes against humanity. In the run-up to Montenegro's parliamentary elections, Karadzic's image, boldly emblazoned on posters for the Serb Democratic Party of Montenegro, was plastered all around Niksic.

BUT, IN HIS HOME VILLAGE OF Petnica, all of Radovan's cousins seemed to be planning to vote for the coalition led by Milo Djukanovic, the current president of Montenegro and the most outspoken critic of Yugoslav president—and onetime Karadzic champion—Slobodan Milosevic. Serbia and Montenegro are the sole remaining members of the rump Federal Republic of Yugoslavia, and there are signs that tiny Montenegro is beginning to chafe under the leadership of its far larger partner. Ultimately, Djukanovic's coalition got 49.5 percent of the votes. The bloc led by Milosevic's favorite, Momir Bulatovic, whom he had anointed prime minister of Yugoslavia just a week earlier, garnered only 36 percent.

IF THEIR INTENT WAS TO EXPRESS their resentment of Serbian meddling, Montenegro's voters certainly succeeded. But it's hard to understand why such ardent admirers of a person like Radovan Karadzic would vote for a coalition led by a politician as pro-Western as Djukanovic. The rally closing his coalition's electoral campaign began with a stirring film presentation on a giant screen showing the Montenegrin president on a world tour through London, Paris, Rome, Vienna, Moscow, Brussels, and Washington (where he appeared with Madeleine Albright and William Cohen), all set to the tune of "America" from *West Side Story*.

BUT IT'S POSSIBLE THAT THE Montenegrins sensed that there are limits to Djukanovic's allegiance to Western values. At his rally there was plenty of railing against "sanctions and hyperinflation," and there were plenty of vows that "we will not give Milosevic the Montenegrin police; we will not tolerate his dictating to us how to run our republic." But there was little condemnation of Serbia's massive military attack against Albanians in the neighboring Kosovo province of southern Serbia and no concern expressed for the ethnic Albanians who were being slaughtered just miles away as Montenegrins went to the polls.

AMONG THE DJUKANOvic supporters, only ethnic Albanians from Montenegro (just seven percent of the total population here) have an interest in the fate of ethnic Albanians from Kosovo (90 percent of the population there). Those percentages may change because the ethnic cleansing being carried out by Milosevic's police and army has increased the number of ethnic Albanians in Montenegro by some 7,000 refugees in the last two weeks. But, for the moment, Milosevic's foes in Montenegro would rather criticize him for domestic sins (clamping down on the media and on the university) than for dragging them into another war, even if this will cost them more sanctions and more ostracism.

THEY ARE APING THEIR BROTHERS from Serbia. Back in December 1996 Serb protesters marched through the streets of Belgrade every day for three months in loud demonstrations against Milosevic. Yet they hardly complained about Serbia's war in Bosnia or apartheid-style rule in Kosovo. Instead they waved Serb flags, made the three-finger Serb nationalist symbol—somehow failing to acknowledge that it was in the name of this flag and these three fingers that Milosevic had led them into the war whose consequences they were now so aggrieved about, and which, incidentally, also led to the slaughter and rape of thousands of people. Madame Jovanka Karadzic is right: There is no hope here.

ANNA HUSARSKA

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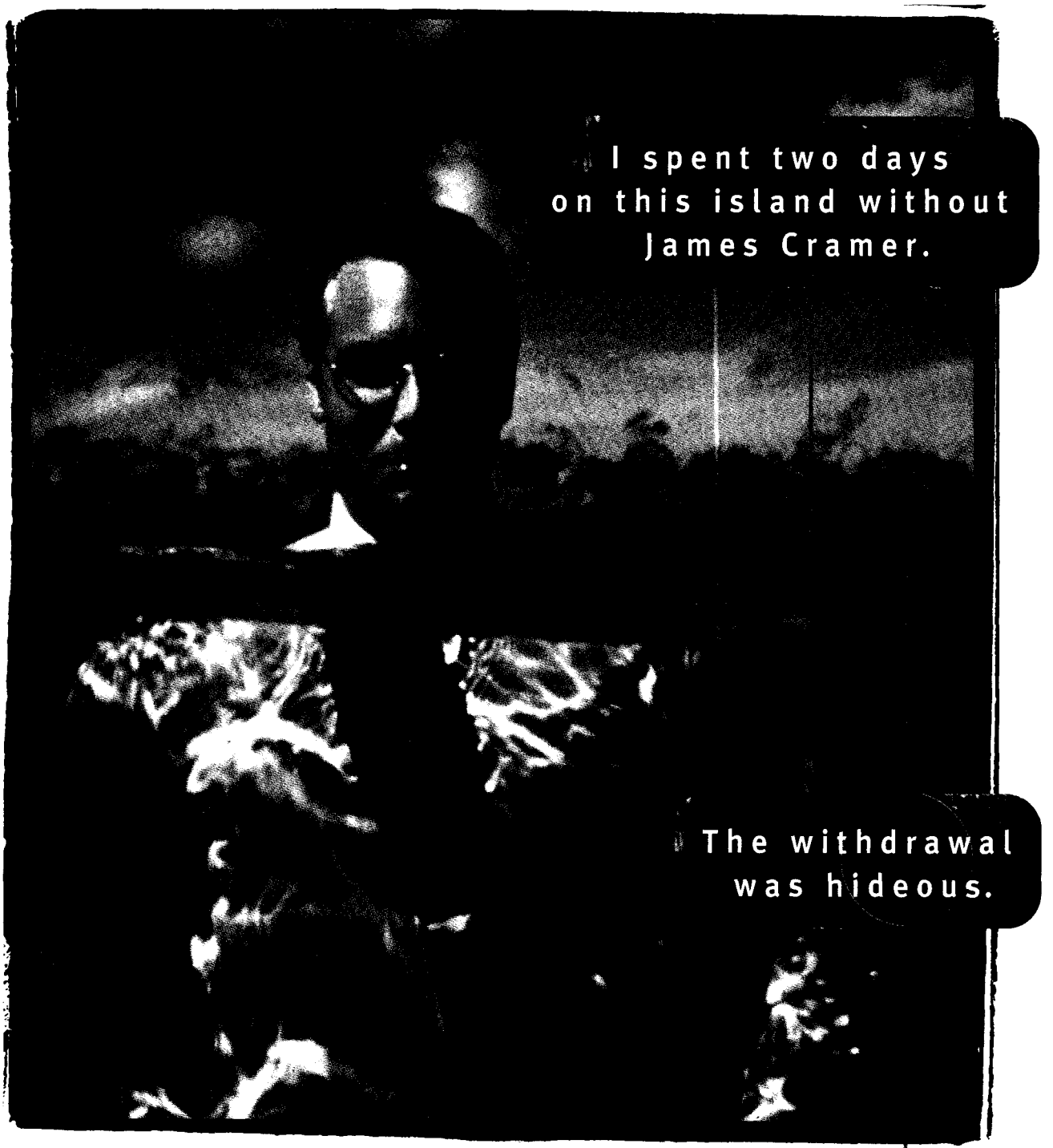

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